OECD Model Tax Convention - 2025 Update

December 2025

New treaty guidance

On November 18, 2025, the OECD released the 2025 update to the OECD Model Tax Convention (MTC), followed by a webinar by the OECD Secretariat on December 10, to explain the key changes. The document runs to 88 pages and includes:

- Clarification on how cross-border remote working arrangements give rise to permanent establishment (PE) tax exposures
- An optional provision for taxing natural resource extraction based on a time test
- Clarification on the application of transfer pricing rules to financial transactions and Amount B
- An amendment to Article 25 on the mutual agreement procedure (MAP) to clarify the interaction between the General Agreement on Trade in Services (GATS) and tax treaties
- Clarifications on instances in which exchanged information can be used for statistical and multilateral peer review purposes.

The MTC update is the first since 2017, and in the webinar the OECD Secretariat emphasized the importance of the 3,500+ strong global treaty network in enabling global trade and investment, the involvement of the 147 member Inclusive Framework (IF) in the process of setting the new updates, plans for further Working Party 1 on Tax Conventions work on treaty updates in 2026 / 27, and the interlinkage with new OECD projects including the recently launched consultation on global mobility tax issues.

1. Commentary to Article 5 (Home Office PE)

The OECD recognizes the growing trend of individuals choosing to work remotely from abroad, in locations other than their employer's premises – such as their home, a holiday rental, or another 'relevant place'. These arrangements raise questions on whether this constitutes a fixed place of business through which the business of an enterprise is wholly or partially carried out and could therefore give rise to a PE for their employer in that other jurisdiction (per paragraph 1 of Article 5). The 2025 update includes changes to the Commentary on Article 5, which introduce non-exhaustive indicators and examples to consider when assessing whether an employee's home or another remote location may constitute a PE.

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The decision to update the Commentary to Article 5, not the article itself, indicates that OECD members and certain IF countries consider the existing article to fit for purpose in determining the PE implications of cross-border remote working. Rather, the 2025 update to the MTC clarifies the existing provisions with 21 paragraphs of new guidance and five examples.

The revised Commentary recounts the relevance of long-standing guidance on the need for the place of business to have a sufficient degree of permanence, the need to assess whether the activities conducted are merely preparatory or auxiliary, and dependent agent evaluation.

The guidance emphasizes that a certain degree of continuity is required for that place to be considered fixed. Example A describes the case of an employee, who works from a different jurisdiction than that of her employer for a period of three consecutive months following a holiday in that jurisdiction. It is noted that the place from which she works in that state should not be considered fixed because it lacks permanence, with reference to the general six-month guideline for permanence.

Place of business: new temporal test

The revised Commentary introduces a new temporal test for determining whether home office arrangements could trigger a fixed place of business PE for the enterprise. This is premised on the understanding that such arrangements are often the choice of the individuals, rather than business-driven. The home or other relevant places are distinguished by the fact that they are not accessible to other staff of the company and by the individual's control over it. A cross-border home office or another relevant place will generally not be considered a fixed place of business of the enterprise if the individual uses it for less than 50 percent of their total working time. The updated commentary notes that exceptions to this approach are not anticipated to occur in most situations given the understanding (in the examples) that the arrangements are chosen by employees for personal reasons. The 50 percent threshold is measured over any 12-month period and is determined by the individual's actual conduct, rather than by reference to the formal contractual terms.

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Whilst generally reassuring, this implies that there may be instances when exceptions to this general rule could occur, depending on the facts and circumstances of each arrangement.

Commercial reason: clarifications on facts and circumstances

If the 50 percent threshold is exceeded, the assessment will depend on the specific facts and circumstances and will evaluate whether there is a commercial reason for the cross-border home working arrangement, such as facilitating business with local customers or suppliers. This is typically the case when the enterprise needs the individual to be in that jurisdiction and would otherwise provide or rent business premises in that state. Assessing whether a commercial reason exists requires an examination of the nature of the enterprise's business and of how the specific activities of the individual relate to that business.

The revised Commentary includes several examples of business activities relevant for the assessment:

- meetings with the enterprise's customers;
- development of a new customer base or identification of business opportunities;
- identification of new suppliers, management of supplier relationships, or undertaking, monitoring, or managing contractual arrangements with suppliers;
- real-time or near real-time interaction with customers or suppliers in different time zones (e.g., call center services, virtual IT support, or medical services);
- access to business-relevant expertise, used in the conduct of the activities of the enterprise (e.g., such as regular meetings with personnel of a university carrying out research for the enterprise)
- collaboration with other businesses;
- performance of customer services that require personnel to be physically present (e.g., training or repairs at the customer's premises); and
- interaction with employees and other personnel of the enterprise (or associated enterprises).

The revised Commentary emphasizes that the mere presence of customers, suppliers, associated enterprises, or being in a different time zone does not automatically satisfy the commercial reason test. Intermittent or incidental engagement with business partners will not displace a conclusion of no commercial purpose, e.g., short occasional visits to local customers.

In the absence of a commercial reason, the location would not constitute a 'place of business' unless other facts and circumstances indicate otherwise. Additionally, no commercial reason exists when remote work is permitted solely for talent attraction or retention, or solely for cost-saving purposes, such as reducing office space.

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The revised Commentary to paragraph 1 of Article 5 of the Model Tax Convention brings welcome, albeit not exhaustive, clarifications related to the PE risk arising from cross-border remote working arrangements. Employers that have these types of arrangements in place should reassess their global mobility policies in light of the updated guidance, as well as relevant domestic guidance and practices in host countries. An important consideration is whether a specific jurisdiction applies a dynamic interpretation of the Commentary to the MTC, which allows for the revised wording to be taken into account when assessing current PE implications. To date, the practice of OECD Inclusive Framework members is inconsistent in this respect. Reservations/positions on Article 5 and the related commentary, respectively, such as those made by India, Israel, Malaysia and Nigeria should also be carefully considered.

To manage these risks, employers should maintain documentation regarding the principal place of work for remote employees, the nature of their activities, and the underlying reasons for their chosen location.

2. Commentary to Article 5 (Natural Resources)

The revised commentary introduces an optional, stand-alone article that countries can incorporate into bilateral tax treaties to provide more favorable taxing rights to the source State for extractive industries. This lowers the PE threshold to a time test; a mutually agreed period for the relevant activities within the source State.

Scope of Relevant Activities - Countries may choose to apply the provision to either (a) offshore activities related to the exploration or exploitation of the seabed and subsoil, or (b) both offshore and onshore activities, including specialized services connected to extraction of finite natural resources. Generic (non-specialized) services are excluded from the onshore scope.

Lower PE threshold - The provision will allow the countries to lower the threshold for PE to a mutually agreed period for companies involved in relevant activities.

Exclusions - Vessels used for transportation, towing, anchor handling, or other auxiliary functions are specifically excluded from the definition of relevant activities.

Capital Gains - The provision consolidates capital gains rules, allowing the source country to tax gains from the disposal of:

a) immovable property (including exploration and exploitation rights)

b) movable property forming part of business property of a PE and used in connection with exploration or exploitation of seabed and subsoil and their natural resources or onshore finite natural resources situated in that other state

c) Shares/interests deriving more than 50 percent of value directly or indirectly from property mentioned in (a) or (b) above.

While sub-paragraph (c) is modelled on paragraph 13(4) of the OECD Model Treaty, it goes further by allowing the aggregation of value derived from both movable and immovable property for the purpose of applying the 50 percent value test.

Employment Income - An optional provision allows the source country to tax employment income arising from relevant activities, even if the employer does not have a PE in the source country, provided that the employment was exercised there for a period or periods exceeding in the aggregate (a bilaterally agreed duration threshold) within a 12-month period.

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The OECD's alternate article on natural resources allows resource-rich countries to tax income from activities within their territory by lowering the PE threshold and expanding taxing rights on employment income. It also broadens source-country rights to tax capital gains on shares or interests deriving more than 50% of their value from movable or immovable property—aligning with the global trend of offshore indirect disposal rules and moving beyond the previous limitation under Article 13(4).

This optional stand-alone Article 5 was introduced to address high-value exploratory or extractive activities that fail the traditional "fixed place" test due to short duration and mobility, and to promote consistency among countries such as Norway, Canada and Australia that already apply similar rules in their bilateral treaties.

We understand that the time test for PE covers activities commencement through decommissioning, if physically carried out in the source country, with profits deemed attributable to a fixed place PE in the source country. Applying the time test from commencement through decommissioning introduces complexity for companies, as it requires tracking cumulative days across all project phases, often over several years. While only activities physically carried out in the source country count, defining this scope—particularly for offshore operations—can lead to inconsistent interpretations. Additionally, deeming profits attributable to a fixed place PE for these activities raises allocation challenges and potential double taxation risks, especially for integrated projects spanning multiple jurisdictions. These factors increase compliance and administrative burdens, making clear treaty language and robust monitoring essential.

While the OECD approach is optional, some jurisdictions may adopt the UN Model Tax Convention's Article 5A, which sets a fixed 30-day threshold and also covers employment income and capital gains. Countries may prefer this for its simplicity and stronger source-based taxing rights, aligning with developing economies' priorities.

For MNEs in extractive industries, the introduction of the optional Article 5 means closer monitoring of global operations to assess PE exposure, evaluate tax implications, and review employee positions, as individuals may become taxable even without a local PE.

3. Commentary to Article 9 (Associated Enterprises)

Article 9 governs the taxation of associated enterprises, in effect transfer pricing rules. Article 9 is described in the OECD Transfer Pricing Guidelines ("OECD Guidelines") as the authoritative statement of the "arm's length principle". Paragraph 1 provides the basis for tax administrations to make a primary transfer pricing adjustment (typically, adjusting profits upwards or losses downwards). Paragraph 2 provides the basis for tax administration in the counterparty jurisdiction to make a corresponding adjustment (typically, adjusting profits downwards or losses upwards). Many of the adjustments to the Commentary are clarificatory but some highlight differences in how jurisdictions approach the applicability of transfer pricing and domestic deductibility rules.

Debt vs. Equity

Discussions on Chapter X of the OECD Transfer Pricing Guidelines, covering financial transactions, highlighted that jurisdictions had divergent views over whether the arm's length principle should be used to determine whether a loan between associated enterprises should be regarded as such for tax purposes. This divergence in views was already reflected in the prior commentary to Article 9, and in Chapter X of the OECD Guidelines, but has been reemphasized though the revisions of the Commentary to Article 9.

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These clarificatory changes to the Commentary continue to leave taxpayers exposed to double taxation. For example, if a loan from A Co (resident in Country A) to B Co (resident in Country B), is re-characterized as equity under the domestic laws of Country B, but this is not respected by Country A, because it considers that the original loan is supportable under the arm's length principle.

Consistent with these changes, the United States has removed an observation it previously had on the Commentary that discussed mechanisms, other than recharacterization, which could be used to address thin capitalization.

Transfer Pricing vs. Domestic Deductibility Rules

The revised Commentary recognizes that, beyond questions of the characterization of debt and equity, Article 9 is only relevant for the allocation of profits between associated enterprises and that it is for domestic law to determine whether and how such profits are taxed, within the confines of the other provisions of the OECD MTC.

Paragraph 3.1 hints that transfer pricing rules should apply before domestic rules on deductibility, stating "Once the profits of the associated enterprises have been allocated in accordance with the arm's length principle, it is for the domestic law of each Contracting State to determine whether and how such profits should be taxed…". However, KPMG is aware that this approach is not applied consistently by all tax administrations.

Adjustments to the Commentary to paragraph 2 of Article 9 reemphasize that the tax administration of a counterparty jurisdiction is not obliged to make a corresponding transfer pricing adjustment, where a jurisdiction denies a deduction under its domestic law, rather than because a transaction is not arm's length. The OECD webinar noted that the OECD would undertake further work on this issue.

Simplified and Streamlined Approach (Amount B)

Consistent with prior public statements, Australia and New Zealand highlight that they have not elected to apply the simplified and streamlined approach ("SSA") for baseline marketing and distribution activities. Australia, Colombia, New Zealand, and Turkey explicitly reserve the right not to provide correlative relief where the SSA has been applied in a counterparty jurisdiction, though all but Colombia acknowledge their political commitment to accept the application of the SSA in certain defined covered jurisdictions. Changes have also been made to the Commentary to Article 25 to recognize the potential role of the SSA in resolving MAP and arbitration cases.

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The SSA is an optional approach that is only applicable if implemented by tax administrations. To date, only Singapore and the U.S. have adopted the SSA. The SSA can only be applied in MAP or arbitration cases where it has been adopted by the jurisdictions on both sides of the transaction, and hence its potential applicability remains very limited.

4. Amendment to Article 25 (Mutual Agreement Procedures)

New sixth paragraph to article 25

In the 2025 update to the OECD Model, a sixth paragraph is added to article 25 of the OECD Model concerning mutual agreement procedures. This sixth paragraph aims to clarify the interaction between the General Agreement on Trade in Services ("GATS") and tax treaties. The GATS and tax treaties interact because it follows from the GATS that World Trade Organization ("WTO") members may not invoke the national treatment provision of the GATS, which can provide for no less favorable treatment of foreign services and service providers as compared to domestic services and service providers, if the measure of a WTO member falls within the scope of a tax treaty. In order to determine whether the national treatment of the GATS may thus be invoked, it must be determined whether a measure falls within the scope of a tax treaty. If there were to be disagreement between WTO members as to whether a measure falls within the scope of a tax treaty, the GATS provides that the matter may be brought before the Council of Trade Services who shall refer the matter to (final and binding) arbitration. With respect to the interaction between the GATS and tax treaties, the new, sixth paragraph, of article 25 of the OECD Model seeks to clarify two points.

The first point relates to a distinction that is drawn by the GATS. In the GATS, a distinction is drawn between tax treaties that existed before and after the entry into force of the WTO Agreement (1 January 1995). If a tax treaty was concluded before 1 January 1995, the question whether a measure falls within the scope of a tax treaty could be brought before the Council of Trade Services by either WTO member. If concluded after 1 January 1995, however, it is provided that such question can only be brought before such council with the consent of both parties to the tax treaty. In practice, the cut-off date of 1 January 1995 provided for uncertainty within the context of amendments to existing tax treaties or the replacement thereof following renegotiations. In order to eliminate this uncertainty and to eliminate the distinction between tax treaties before and after entry into force of the WTO agreement, the new, sixth, paragraph of article 25 of the OECD Model provides that the contracting states agree that any dispute as to whether a measure falls within the scope of the tax treaty shall be resolved by means of a mutual agreement procedure within the meaning of the third paragraph of article 25 of the OECD Model (instead of the procedure provided for by the GATS) or any other procedure agreed to by the contracting states. As a result of the introduction of the sixth paragraph, such disputes, irrespective of the date of conclusion of the relevant tax treaty, shall only be referred to the Council of Trade Services if the contracting states were to agree to that.

The second point that is clarified relates when a measure would fall within the scope of a tax treaty for the purposes of the GATS. The clarification provided for by the new, sixth, paragraph of article 25 is that a measure is considered to fall within the scope of a tax treaty if it were to fall within the scope of the non-discrimination provision (article 24). This wide scope implies that also measures relating to taxes other than the covered taxes within the meaning of article 2 of the OECD Model, could qualify as falling within the scope of the GATS because the non-discrimination provision applies to taxes of every kind and description levied by, or on behalf of, the State, its political subdivisions or local authorities. .

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The result of these two clarifications is that a national treatment dispute that would relate to a tax matter can only be brought to the Council for Trade in Services if both Contracting States agree that either the measure does not fall within the scope of the Convention or that the dispute should be resolved by the Council for Trade in Services. The OECD considers this to be aligned with the rationale of paragraph 6 that national treatment disputes should fall within the scope of the tax treaty itself and the mutual agreement procedure provided for and not be displaced by the non-discrimination obligations arising from the GATS

5. Commentary to Article 26 (Exchange of Information)

The 2025 update contains revisions to two paragraphs of the Commentary on Article 25(2), which addresses the confidentiality of information received through exchange of information between Contracting States. In general, Article 26(2) permits disclosure of such information only to persons concerned with the assessment, collection, enforcement or prosecution of taxes, the determination of appeals with respect to taxes, or the oversight of those functions. It further limits the use of the exchanged information to those tax purposes.

The first set of revisions provides that "reflective non-taxpayer specific information," such as statistical data, non-taxpayer specific notes, summaries, or memoranda generated based on exchanged information, are subject to the confidentiality rules of Article 26(2). It notes, however, that disclosure to third parties is nevertheless permitted if the information would not directly or indirectly reveal the identity of a taxpayer and the countries exchanging the information consult and agree that such disclosure would not impair tax administration in either country.

The second set of revisions clarifies that information received with respect to one taxpayer can be used for tax matters concerning another taxpayer, without the need to inform the country that sent the information. It further clarifies that where information is received with respect to multiple taxpayers, it can only be communicated to a specific taxpayer to the extent that it has a bearing on the outcome of a tax matter concerning that taxpayer.

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The revisions relating to reflective non-taxpayer specific information appear intended to facilitate the sharing of statistical information and summaries to support multilateral peer review processes

6. Observations

Role of OECD in international tax policy

As noted above, the 2025 MTC update is the first since 2017, when the BEPS 1.0 deliverables were incorporated into the MTC and Commentary. The intervening years have seen OECD resources substantially committed to the development of the Two Pillars. In the webinar particular emphasis was placed on the global tax treaty network as the bedrock of the international tax framework, as key to delivering certainty and stability for cross-border trade and investment in an increasingly complex international tax environment, and as a leading example of the importance of multilateralism in the tax sphere. It might be read that this could herald a refocusing on the traditional work of the OECD, on incremental improvements to treaty and transfer pricing guidance to reflect evolving commercial realities, into 2026 and beyond.

Application of changes to the OECD MTC

On the webinar the OECD Secretariat noted that, in general, much of the new Commentary could be directly applicable to existing tax treaties. This will indeed be the case for jurisdictions adopting an ambulatory approach to treaty interpretation, though not necessarily for those adopting static interpretation. There are also countries that have specifically reserved against certain parts of the Commentary. This is something that businesses that are considering updating their policies on global mobility must approach with caution, as there are numerous countries where the revised Commentary will not be relevant, or may not be relevant in the absence of additional domestic guidance. This highlights a limitation of addressing issues arising from global mobility through updates to the Commentary to the OECD MTC.

It remains to be seen at what speed the updates to treaty provisions (i.e., the new Article 25 paragraph, the alternative extractives PE threshold) are incorporated into tax treaties, as (in contrast to the BEPS 1.0 changes) these are not included in a multilateral instrument for mass update to the treaty network – updates will be via bilateral negotiation.

Public consultation on global mobility

In connection with the updates to the Commentary to Article 5, the OECD has also launched a broader consultation on the tax implications of global mobility (available here). Responses to this consultation are due by December 22, 2025.

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