

OECD issues 2025 Model Tax Convention update: new Commentary on cross-border working and other issues

25 November 2025

In brief

What happened?

The Council of the OECD on 19 November 2025 approved updates to the Model Tax Convention (MTC) with accompanying Commentary. The update revises and clarifies various MTC Articles, including:

- New Commentary to Article 5 addressing situations where cross-border working from a home or other premises may constitute a permanent establishment (PE),
- The creation of a PE in the place of extraction of natural resources,
- An optional treaty provision for taxing activities connected with the exploration and exploitation of extractible natural resources,
- Changes to the Commentary in respect of the optional simplified and streamlined approach for Transfer Pricing, also known as 'Amount B,'
- Other provisions regarding dispute resolution, transfer pricing for financial transactions and utilizing information received under exchange of information mechanisms

Why is it relevant?

The updated Commentary on Article 5 will be relevant to many sectors and organizational profiles. With the rise of remote workers, the creation of PEs has become an increasingly common issue for enterprises, and this guidance should provide some clarity with this issue.

In detail

The OECD has been working on this update throughout 2025, consulting with businesses and other stakeholders to ensure that the new examples reflect recent developments in cross-border working patterns that businesses frequently encounter. This OECD update to the MTC is a precursor to a much broader project on cross-border working, covering a wider range of tax issues, and is planned for 2026 onwards.

Article 5 PE: new Commentary on cross-border working from a home or other relevant place

An important point of context to note is that this update is only relevant to the Fixed Place of Business (FPoB) test within Article 5. The Dependent Agent threshold and commentary remain unchanged.

Modern working practices and the incidence of cross-border remote working have significantly changed since the guidance (paragraphs 18 and 19 of the Commentary) was written in 2012. The OECD sought to update this guidance to reflect current working practices.

Paragraphs 18 and 19 have now been deleted, and the Commentary introduces a new section (paragraphs 44.1–44.21) addressing when cross border working from a home or other ‘relevant place’ may create a PE. The key features are:

1. A new analytical framework confirms that whether a home or other relevant place is a FPoB depends on all facts and circumstances, including permanence, whether the place is at the disposal of the enterprise, the carrying on of the non-resident’s business at that place, and the nature of activities.
2. A time-based indicator is introduced: if an individual works from a home or relevant place for less than 50% of their total working time for the enterprise over any rolling 12-month period, that place is generally not considered a place of business. If the 50% threshold is met, further analysis is required.

Observation: *The application of the 50% threshold is less clear if it’s part of a pattern of visiting the country over multiple years. In these cases, the guidance states that the period of time that a place is used should be considered in combination with the number of times that the place is used over the years in question. The new guidance in 44.7 implies that you would then look to facts such as the commercial reason test to help assess the situation, but the comments in Example A are less clear in this regard. Given that the policy intention is to help businesses support individuals work cross border where the place is at the use and disposal of the individual, not the enterprise, it’s unclear why repeated visits should lower the PE threshold. Indeed, one might expect that repeated visits will be a common characteristic of these arrangements (e.g., where an individual owns a holiday home, etc.) and so should be explicitly protected from a lower threshold.*

The Commentary introduces a 'commercial reason' test, which may indicate a FPoB, focusing on whether the individual's physical presence in the State facilitates the enterprise's business, such as access to customers, suppliers, or time-zone advantages. Merely permitting home working to retain staff or reduce costs does not meet this test. Similarly, intermittent or incidental commercial reasons would not be sufficient to create a FPoB PE.

Five examples illustrate the application of these rules, covering scenarios such as short-term stays, regular but below 50% home working, and cases where client-facing activities or time-zone factors establish a PE.

Article 5 PE: natural resources and new optional provision

The Commentary broadens the interpretation of "any other place of extraction of natural resources" and clarifies that exploration activities are not expressly listed but may be covered by specific treaty provisions.

A new optional article is introduced for taxing activities related to the exploration and exploitation of extractible natural resources, with a lower PE threshold based on a bilaterally agreed duration, and scope variants for offshore and onshore activities.

The provision includes rules on capital gains, anti-contract splitting, and optional employment income expansion mechanisms.

Observation: *When relying on the new passages in the Commentary, businesses should be conscious that there are a number of individual country reservations regarding certain aspects. It is possible, therefore, that some countries may deviate from the approach suggested in the Commentary. Checking the individual treaties and being aware of individual country practice and legal framework is necessary. Similarly, it will be necessary to check from what date the Commentary might be followed in individual countries. This may depend on several factors including the country's constitutional framework, whether the Commentary would apply in favor of taxpayers or tax authorities, and whether a change in the Commentary refers to the pre-existing provisions of the MTC and whether such change could be reasonably interpreted from these provisions.*

Actions to consider

Businesses may wish to review (i) any flexible working policies or approaches in general, and (ii) any employee-specific arrangements that have been agreed or approved, to ensure that no PE risk exists in light of the new guidance (or, conversely, to test whether these could be relaxed to permit more cross-border working).

The new guidance offers clearer guidance to employers and employees regarding the creation of an FPoB PE; however, we would suggest businesses ensure controls and governance are put in place. Specifically, it may be helpful to monitor where cross-border employees are spending their time and consider how best to track permitted cross-border working arrangements going forward. Of course, any determination of a PE will come down to actual conduct more than contractual arrangements.

For those employees with a low risk of creating a dependent agent PE, this new clearer guidance may provide room for some employers to offer more flexibility on work location. However, broader issues may still arise from spending time working cross-border remotely. Such issues include immigration, payroll, social security contributions, and acquisition of additional employment-related rights or benefits and pensions entitlements.

Let's talk

For a deeper discussion of how the 2025 OECD MTC update may affect your business, please contact:

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