

2025 updates to the OECD Model Treaty and Commentary released addressing cross-border remote work arrangements

November 26, 2025

In brief

What happened?

On November 19, 2025, the OECD released updates to the OECD Model Treaty and Commentary. The updates provide guidance related to cross-border remote work in the context of permanent establishment, as well as the taxation of certain income related to natural resource extraction.

Why is it relevant?

While cross-border remote work arrangements have proliferated in recent years, there has been a dearth of guidance on how to address such arrangements from a cross-border tax perspective. The OECD Model Treaty and Commentary may influence how such arrangements are viewed by tax authorities, courts, and practitioners.

Action to consider

Businesses should consider how these changes to OECD Model Treaty and Commentary may affect existing cross-border remote work arrangements and the guidelines provided to remote workers.

In detail

Overview

The updates were approved by the OECD Committee on Fiscal Affairs and the OECD Council, and are included in *The 2025 Update to the OECD Model Tax Convention* [\[link\]](#). They will be reflected in revised condensed and full editions of the OECD Model Treaty and Commentary, to be released in 2026. The OECD Model Treaty was last updated in 2017.

As noted in the press release [\[link\]](#) accompanying the release, the updates are intended to provide practical solutions to modern tax challenges. The updates consist of changes to the Introduction to the OECD Model Treaty, changes to Article 25 (Mutual Agreement Procedure), changes to the Commentary on various articles, including Article 5 (Permanent Establishment), and changes to the positions of non-member economies.

Although any such provisions would have to be included in a U.S. income tax treaty in order for them to directly apply to a taxpayer, the OECD Model Treaty and Commentary are reflected in many existing bilateral income tax treaties, and they often serve as an interpretive reference for courts, tax authorities, and practitioners. They provide helpful guidance in an area where no guidance was previously available, filling a gap that should be helpful to companies in establishing guidelines for remote workers when considering permanent establishment impacts.

Cross-border remote work

The update provides guidance regarding when cross-border remote work, including work conducted from a “home office,” gives rise to a taxable presence. They establish prerequisites both as to the duration of remote work and the commercial connection of the remote work to the business of the employer.

The updates to the Commentary on Article 5 (Permanent Establishment) are intended to clarify the circumstances in which an individual’s home could constitute a “place of business” of the enterprise for which the individual works. These changes are intended to reflect modern working arrangements and to provide additional certainty as to when a fixed place of business permanent establishment will, and will not, be created by an individual working from their home, or from another relevant place, such as a second home, a holiday rental, or the home of a friend or relative. In the OECD’s summary of key changes [\[link\]](#), the changes are described as an evolution of existing principles, rather than a change in approach.

Observation: The updated Article 5 Commentary pertains to when a fixed place of business constitutes a permanent establishment. The Commentary related to the creation of a permanent establishment through a dependent agent is unchanged.

Under the updated Commentary, if an individual works from a home or other relevant place for at least 50% of their total working time over the course of any twelve-month period commencing or ending in the relevant taxable year, whether the enterprise has a place of business at such a place will be determined by the facts and circumstances. Generally, if the 50% threshold is not satisfied, the home or other relevant place would not be considered a place of business of the enterprise. However, under the updated Commentary, 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, so if there is a pattern of visiting the country over multiple years, this may impact the application of the 50% threshold.

Among the facts and circumstances to be taken into consideration if the 50% presence standard is met is whether there is a commercial reason for the activities to be undertaken by the individual in the

Contracting State where the home or other relevant place is located. Generally, a commercial reason will exist if the physical presence of an individual in the location of the remote office will itself facilitate the carrying on of the business of the enterprise, such as where there are people or resources in that location to which the enterprise needs access for the performance of its activities. The Commentary includes an example where short occasional visits to the premises of a customer or engagement that is minor in the context of the overall business with the customer will not meet the commercial reason standard. Similarly, the commercial-reason standard is not met if the remote work is allowed solely to obtain or retain the services of the individual.

Observation: Global mobility and flexible work arrangements ramped up dramatically as a result of changes introduced during the covid-19 pandemic. While guidance on home office arrangements in the permanent establishment context was previously addressed to a lesser degree in Commentary that is removed as a result of these updates, these updates provide greater clarity in the permanent establishment context and are more specific to contemporary ways of working.

Observation: The updated Commentary provides a non-exhaustive list of examples of “another relevant place,” but other similar locations could potentially fall into the same category.

Observation: The updated Commentary applies a facts-and-circumstances approach to questions such as what constitutes ‘working time’ and whether there is a ‘commercial reason’ for the individual to be located in the other Contracting State. For example, the mere presence of customers or suppliers of the enterprise or of an associated enterprise in the Contracting State where the home or other relevant place is located should not lead to the automatic conclusion that there is a commercial reason for the use of such a place in that State to carry out activities related to the business of the enterprise; similarly, the mere fact that the home or other relevant place is located in a different time zone to that of the Contracting State in which the enterprise is located should not lead to the automatic conclusion that there is a commercial reason for the use of such a place in that State to carry out activities related to the business of an enterprise.

Observation: The updated commentary relevant to remote workers is in the permanent establishment context. The updates do not address personal or dependent services or employment taxes, and cross-border remote work may still give rise to considerations, such as immigration, payroll, social security contributions, and additional employment-related rights or benefits and pension entitlements.

Observation: In consideration of the updated Commentary, taxpayers may wish to review any existing flexible work arrangement policies, as well as any employee-specific arrangements that have been put in place. Bearing in mind the facts-and-circumstances approach that underlies the updated Commentary, taxpayers may wish to evaluate and monitor where employees working under cross-border arrangements are spending their time and consider how best to track cross-border work arrangements going forward.

See additional detail on the updated Commentary in the Tax Policy Alert– OECD issues 2025 Model Tax Convention update: new Commentary on cross-border working and other issues [[link](#)].

Natural resource extraction

The update introduces a new provision related to the taxation of income from natural resource extraction activities, such as those pertaining to oil, gas, and minerals.

The Commentary on Article 5 is updated to add an optional alternative provision on activities in connection with the exploration and exploitation of extractible natural resources. The alternative provision introduces a lower permanent establishment threshold, which would be crossed after a non-

resident enterprise has operated in a State for longer than an agreed-upon time period. These changes are intended to reinforce source-country rights and support resource-endowed developing economies.

Other changes (outside of Article 5)

The updates also involve changes to the Commentary on Article 9 (Associated Enterprises) that pertain to the transfer pricing aspects of financial transactions and the OECD Transfer Pricing Guidelines. They also provide clarification regarding the application of Article 9 in the context of domestic laws on interest deductibility, such as those recommended in the final report on BEPS Action 4 (pertaining to limiting base erosion involving interest deductions and other financial payments). There are accompanying changes to the Commentary on Article 7 (Business Profits) and Article 24 (Non-Discrimination).

There are also changes to the Commentary on Article 25 (Mutual Agreement Procedure), to update for dispute resolutions mechanisms in the General Agreement on Trade in Services (GATS), and related to Amount B under Pillar One of the Inclusive Framework on BEPS. In addition, there are changes to the Commentary on Article 26 (Information Exchange).

Let's talk

For a deeper discussion of how this development might affect your business, please contact:

International Tax Services

Oren Penn

+1 202-413-4459
oren.penn@pwc.com

Steve Nauheim

+1 202-415-0625
stephen.a.nauheim@pwc.com

Nita Asher

+ 202-870-2462
nita.asher@pwc.com

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