

Remote Work and Permanent Establishments: Key Takeaways from the OECD 2025 Update

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Key takeaways

- The definition of a permanent establishment in Article 5(1) of the OECD Model Tax Convention remains unchanged. However, the Commentary now contains detailed guidance on when a home office, work performed in second homes and other “relevant places” in the other State may constitute a permanent establishment.
- Three-step test for remote work PEs: in practice, the analysis focuses on (i) permanence of use, (ii) whether at least 50% of working time is spent in the other state, and (iii) whether there is a genuine commercial reason for the person to be there.
- Remote work granted for work-life balance, talent attraction or office-cost savings alone should generally not result in a PE, even if more than half of the work is performed from home.
- A home office may still be a PE where a founder, key decision-maker or consultant effectively “carries” the business from another state.
- A home office may nevertheless constitute a permanent establishment if, in cases where the founder, key decision-maker or consultant effectively performs the main part of the business activities from the other State.

Introduction

On 19 November 2025, the OECD released the 2025 Update to the OECD Model Tax Convention. For day-to-day practice, one of the most relevant elements is the new guidance on cross-border remote work in the Commentary to Article 5 (“Cross-border working from a home or other relevant place”, new paras. 44.1–44.21). While the definition of a permanent establishment (PE) in Article 5(1) remains unchanged, the Commentary now provides a greater operational framework for home offices and similar set-ups in another contracting state.

In addition to the remote work guidance, the 2025 Update also introduces changes to the Commentary on, for instance, the taxation of natural resource activities, interest deductibility and dispute resolution (Article 25, including aspects linked to Amount B). This note focuses on the remote work aspects of Article 5 OECD MA.

Does the 2025 Update automatically change my tax position?

No. The OECD Model Tax Convention and its Commentary are not law as such, but they are highly influential for the interpretation of tax treaties that are based on the OECD Model. The practical impact of the 2025 Update will depend on the wording of the applicable treaty, any reservations or observations made by the countries concerned, and how tax authorities and courts in those countries apply the updated Commentary in practice. Some jurisdictions – including those that traditionally apply a stricter PE approach – may interpret or apply the guidance more narrowly than others.

What is the main change regarding remote work and PEs?

The OECD maintains the classic PE definition (a “fixed place of business” through which the enterprise’s business is carried on), but now provides detailed guidance for modern remote-work scenarios, including home offices, second homes and other “relevant places” in another country.

How does the OECD define a “fixed place” in remote work cases?

- **Permanence:** If someone works, for example, three consecutive months from another state within a twelve-month period, that place usually does not have enough permanence to be a PE. However, if a home or other place is used continuously over an extended period (across multiple years), the criterion of permanence may be met.
- **Working-time threshold:** A home or relevant place is generally not a PE if the individual works less than 50% of their total working time for the enterprise from that place over any twelve-month period.
- **Commercial reason test:** If 50% or more of the work is performed in that other state, the circumstances are examined, especially as to whether there is a commercial reason for the work to be performed there (e.g. customer interaction, local market development, time-zone requirements or collaboration with local partners).

What does not count as a commercial reason?

Allowing remote work purely for HR reasons (work-life balance and talent attraction) or to save office costs does not necessarily make a home office a PE – even if more than 50% of the work is performed there. The intention of the OECD is to avoid a proliferation of “micro-PEs” in standard cross-border home-office cases.

Are there any exceptions?

Yes. If an individual is the only or primary person conducting the business of the enterprise (e.g. a non-resident consultant running most of their business from a home office in another state), that home office may be a PE. This is especially relevant for founder-led companies and senior individuals effectively “carrying” the business from another state.

What does this mean in practice?

The 2025 Update does not fundamentally change the PE concept, but provides a clearer, more operational framework for cross-border remote work:

1. Check permanence.
2. Apply the 50% working-time threshold.
3. Assess whether there is a genuine commercial reason for the person to be in the other state.
4. Consider the preparatory/auxiliary carve-out and the “only/primary person” exception.

What should businesses do now?

The 2025 Update does not in itself change the wording of domestic law or treaties, but it will shape how tax authorities and courts analyse cross-border remote work going forward. In practice, groups should:

- Map cross-border remote work patterns, including employees and key individuals working regularly from another state (home office, second home, “workation”, etc.).
- Review remote work and HR policies to ensure they reflect the 50% working-time threshold and set clear expectations on where work is performed.
- Document the commercial rationale where employees work extensively from another state (customer proximity, market development, time zones, etc.).
- Identify high-risk cases, in particular founder-led businesses or senior individuals who may be the only or primary person carrying on the business from another state.
- Coordinate between tax, HR and legal, especially when granting flexible cross-border work or long-term “work from abroad” permissions.

Our tax team will be pleased to assist you in reviewing your current remote work arrangements, assessing potential PE risks and aligning your policies with the new OECD guidance.

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No legal or tax advice

This Legal Update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this Legal Update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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