KPMG

Tax Flash News

26 November 2025

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OECD releases guidance on permanent establishment in case of cross-border remote working

Executive summary

The Organisation for Economic Co-operation and Development (OECD) recently published updates to the Model Tax Convention.[1] In addition to a new provision in Article 25 (Mutual Agreement Procedure), the commentary on several articles has been revised.

Most notably, clarifications have been provided to address the constitution of fixed place of business in the context of cross-border working from home or other relevant place.[2] It is clarified that if the carrying on of business activities of an enterprise at such places is intermittent or incidental, that place will not be considered a place of business of the enterprise. However, continuous use over an extended period may indicate otherwise.

Working from home or other relevant location in another country for less than 50 per cent of total working time in a 12-month period does not result in a foreign enterprise having a place of business in that other country.

Even if the 50 per cent threshold is fulfilled, a place of business is not automatically constituted; further analysis of facts and

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1 The 2025 Update to the OECD Model Tax Convention (EN)

2 Insertion of Paragraphs 44.1 to 44.21 to the Commentary on Article 5 – Permanent Establishment

circumstances is required. A key factor is whether there is a commercial reason for the individual's presence in that country.

This flash news covers key updates to the OECD Commentary on Article 5 (Permanent Establishment) in the context of remote working (the 2025 update).

Key updates

The business income of a foreign enterprise is taxable in the source country if it has a permanent establishment (PE) in that country. PE is defined to mean a fixed place of business through which the enterprise's business is carried on. This requires a certain degree of permanence; for instance, the OECD Commentary on Article 5 suggests a threshold of six months. Additionally, the disposal test must be satisfied—meaning the enterprise should have the right to use the premises for its business activities, not merely access it intermittently or incidentally. However, even if these conditions are met, no PE is constituted if the activities carried out are preparatory or auxiliary in nature.

The OECD Commentary on Article 5,[3] prior to the 2025 update, provided that an individual's home may be considered to be at the disposal of the enterprise where such home is used on a continuous basis for carrying on business activities for an enterprise and it is clear from the facts and circumstances that the enterprise has required the individual to use that location.

The 2025 update deals with the above issue in more detail covering an individual who works for a foreign enterprise from his home or another place such as a second home, a holiday rental, the home of a friend or relative etc. (referred to as "*other relevant place*") — such premises are neither the premises of the enterprise nor of its customer, supplier or associated enterprise.

Most homes or other relevant places are not accessible to other employees of the enterprise and are under greater degree of control of the individual, making it challenging to determine whether the activities conducted there are sufficient to constitute a fixed place of business for that enterprise.

Consideration for a fixed place of business

Merely working from a home or other relevant place does not automatically make it a place of business for the enterprise; each case must be assessed individually.

[3] Paragraph 18 and 19 (deleted in the 2025 update)

If an individual works from home or other relevant place for less than 50 per cent of his total working time over a 12-month period commencing or ending in the relevant tax year, it is not considered a place of business for the enterprise.

If this 50 per cent threshold is fulfilled, further analysis of facts and circumstances is required to determine whether that location constitutes the enterprise's place of business or not.

Commercial reason for individual's presence in the other country

A prominent consideration is whether there is a commercial reason for the individual's presence in another country, such as facilitating business with local customers or suppliers.

This typically occurs when an enterprise needs an individual, such as an employee, to be present in another country to operate effectively, using a home or other relevant place to support its activities. If that place is not available, the enterprise might use alternatives such as a rented office. A commercial reason exists when the individual interacts with customers, suppliers, or other parties in that country on behalf of the enterprise. Short occasional client visits or an engagement that is minor in the context of the overall business relationship with that client do not establish a commercial reason.

There must be a clear link between the individual's presence at a location and the enterprise's business activities through that location.

Examples of commercial reasons for business activities in the other country

A commercial reason for conducting business activities in the other country may exist if the individual's presence there enables following tasks while working from home or other relevant place:

- Holding meetings with the customers of the enterprise.
- Building a new customer base or identifying business opportunities.
- Identifying new suppliers, managing supplier relationships, or undertaking, monitoring or managing supplier contracts.
- Interacting with customers or suppliers in real time or near real time in different time zone(s) (e.g. call center, virtual IT support, or medical services).

- Accessing business-relevant expertise.
- Collaborating with other businesses.
- Performing services for customers in the other country that require their physical presence (e.g., training or repairs at the customer's premises).
- Interacting with employees or other personnel of the enterprise or its associated enterprises.

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 his own consulting business from a home office in that country would have that home office treated as a place of business for his enterprise.

The presence of customers, suppliers, or associated enterprises in the other country, or having a home or other relevant place in a different time zone, does not by itself mean there is a commercial reason for using that place for business activities. Allowing someone to work from home only to obtain or retain their services or to reduce costs does not count as commercial reasons.

Examples of cross-border working from home or other relevant place

A. Examples where fixed place of business is not constituted

Facts	Rationale
An employee works from a rented place in another country for three consecutive months during a 12-month period, followed by a holiday stay in that country.	Lacks permanence
An employee works from her home in another country for 30 per cent of her total working time for one to two days per week throughout the 12-month period.	Sufficient degree of permanency *but* 50 per cent threshold not met
An employee works from his home in another country for 60 per cent of his time providing services remotely to clients (without physical meeting) and occasionally visits a local client to review the performance.	50 per cent threshold met *but* no commercial reasons for his presence

B. Examples where a fixed place of business is constituted

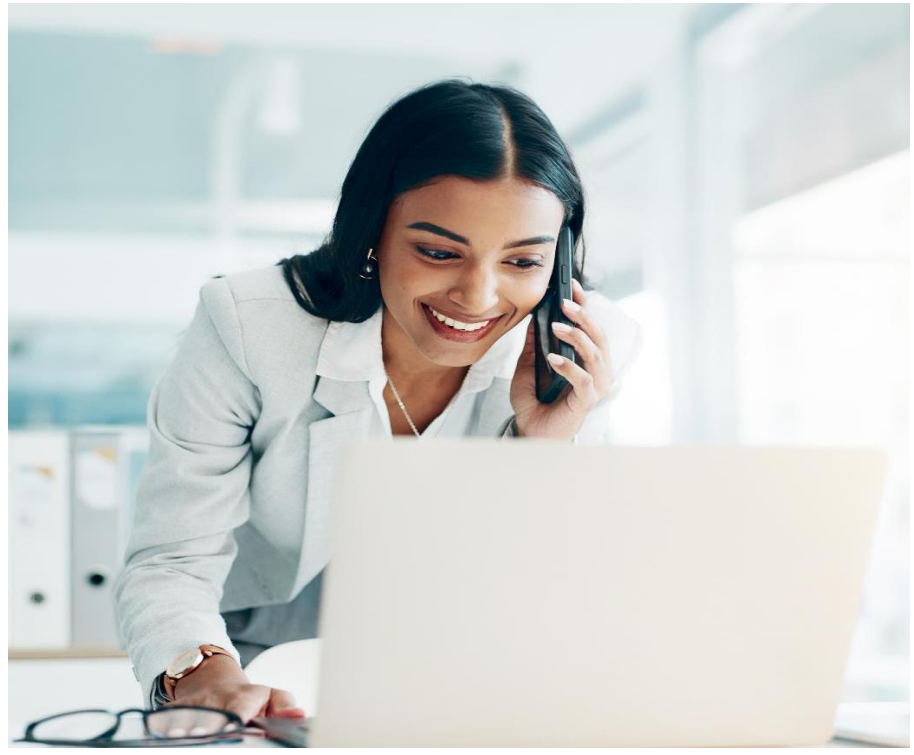
Facts	Rationale
An employee works from his home in another country for 80 per cent of his working time and regularly visits local clients to provide services to the clients.	Sufficient degree of permanency, 50 per cent threshold met *and* commercial reasons for his presence
An employee works almost exclusively from her home in another country, providing virtual services (real-time or near real-time around the clock) to customers located in different time zones.	

India's reservations

India does not agree with the detailed conditions provided in the 2025 update, including time threshold and commercial reason requirement, for determining if an individual's home constitutes a PE. India considers that an individual's home can be considered as being at the disposal of the enterprise and constitute a PE of the enterprise.

Our comments

With remote work requests on the rise—whether from an individual's home or another location—businesses are facing significant uncertainty regarding potential tax risks. Businesses should review their cross-border remote working arrangements and update policies to align with the OECD guidance, while also considering India's stricter interpretation to mitigate potential tax risks.



KPMG in India addresses:

Ahmedabad
Commerce House V, 9th Floor, 902, Near Vodafone House, Corporate Road, Prahlad Nagar, Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Hyderabad
Salarpuria Knowledge City, Orwell 6th Floor, Unit-3, Survey No 83/1, Plot No 2, Raidurg, Hyderabad – 500 081.
Tel: +91 40 6111 6000

Noida
Unit No. 501, 5th Floor, Advant Navis Business Park, Tower-A, Plot# 7, Sector 142, Expressway Noida, Gautam Budh Nagar, Noida – 201 305.
Tel: +91 0120 386 8000

Bengaluru
Embassy Golf Links Business Park, Pebble Beach, 13/02, 'B' Block, 1st & 2nd Floor, Off Intermediate Ring Road, Bengaluru – 560 071
Tel: +91 80 6833 5000

Jaipur
Signature Towers, Office No. 402, Fourth Floor, S Plot No. DC-II, Lal Kothi District Shopping Center, Tonk Road, Jaipur – 302 001
Tel: +91 141 – 672 1000

Pune
9th floor, Business Plaza, Westin Hotel Campus, 36/3-B, Koregaon Park Annex, Mundhwa Road, Ghorpadi, Pune – 411 001.
Tel: +91 20 6747 7000

Chandigarh
Elante Offices, Unit No. A505, 5th Floor, Plot No.178-178A, Industrial Area Phase-1, Chandigarh – 160 002.
Tel: +91 172 664 4000

Kochi
Syama Business Centre, 49/179, 3rd Floor, NH 47, Bypass Road, Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Chennai
KRM Towers, Ground, 1st, 2nd, & 3rd Floor, No. 1, Harrington Road, Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Kolkata
Unit No. 604, 6th Floor, Tower – 1, Godrej Waterside, Sector – V, Salt Lake, Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
Lodha Excellus, Apollo Mills Compound, 2nd Floor, N M Joshi Marg, Lower Parel, Mumbai- 400 011.
Tel: +91 22 3989 6000

Vadodara
Ocean Building, 303, 3rd Floor, Beside Center Square Mall, Opp. Vadodara Central Mall, Dr. Vikram Sarabhai Marg, Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
PR heights, 4th Floor, NH 16 Service Rd, opp. Manipal Hospital Road, Tadepalle, Andhra Pradesh – 522 501.
Tel: +91 0864 536 2000

Gurugram
Building No.10, 8th Floor, DLF Cyber City, Phase II, Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

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