



OECD issues updated guidance on fixed place PE in remote work

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Issue 2

In brief

On 19 November 2025, the Organisation for Economic Co-operation and Development (OECD) published updates to the OECD Model Tax Convention on Income and on Capital (OECD Model)^{1,2}, as approved by the OECD Council. These updates will be reflected in the forthcoming revised version of the OECD Model, to be published in 2026. A key update is the introduction of clearer rules on when 'home office' or remote work arrangements create a taxable presence for an enterprise, providing greater certainty as cross-border remote work becomes a permanent feature of modern workplaces. This news flash provides an overview of the updated guidance along with our observations.

In detail

Existing principles of permanent establishments under the OECD Model

A permanent establishment (PE) is a taxable presence of an enterprise outside its jurisdiction of residence. Based on the definition of PE under Article 5 of the OECD Model, a PE may broadly be created through either a fixed place of business or a dependent agent. Specifically, Article 5(1) provides that 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The existing commentary on the definition of 'fixed place of business' provides limited guidance on remote work arrangements, addressing home offices in only two paragraphs.

Updated guidance on when remote work arrangements create a fixed place of business PE

To better reflect modern cross-border working arrangements and provide greater certainty, the OECD has expanded the commentary by introducing more than 20 new paragraphs (44.1 to 44.21), replacing the earlier guidance. These additions clarify when an individual working from a home or other relevant location, such as a second home, holiday rental, or the home of a friend or relative, in one jurisdiction may constitute a fixed place of business for an enterprise in another jurisdiction.

The updated guidance reiterates that when determining whether a fixed place of business exists under a cross-border remote work arrangement, the existing principles continue to apply. Specifically, the place must exhibit a sufficient degree of permanence to be considered 'fixed'. Furthermore, even if a fixed place of business would otherwise constitute a PE, it will not be regarded as such if the activities performed by the enterprise are merely preparatory or auxiliary, that is, they do not form an essential and significant part of the enterprise's overall business.

Building on these principles, the updated guidance introduces a two-limb test to determine whether a place of business exists:

- **A bright-line temporal threshold test:** In most cases, if an individual works from a home or other relevant place for less than 50% of their total working time for an enterprise over any 12-month rolling period, this will generally not be regarded as a place of business. The calculation of the working time is based on the individual's actual conduct, rather than their formal contractual arrangement with the enterprise.
- **Commercial reason for the individual's activities in the jurisdiction:** If the 50% working-time threshold is met, the facts and circumstances must be assessed, with prominent consideration given to whether there is a commercial reason for the activities to be undertaken by the individual in the jurisdiction where the home or other relevant place is located.

Our observations: *The application of the 50% working-time threshold is less clear when working in another jurisdiction is part of an individual's recurring pattern over multiple years. The updated 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. In such cases, it appears that the 50% working-time threshold is not decisive; the second limb, which calls for a facts-and-circumstances analysis, may also need to be applied to reach a proper assessment.*

Commercial reasons test

In determining whether the commercial reasons test is met, the following factors should be considered:

- The test will be met if the individual's physical presence in the jurisdiction (or in the same geographic region) facilitates the carrying on of the enterprise's business, for example, by enabling:
 - meetings between the individual and customers of the enterprise;
 - cultivation of a new customer base, or identification of business opportunities;
 - identification of new suppliers, managing relationships with suppliers, or undertaking, monitoring or managing contractual arrangements with suppliers;
 - the real-time, or near real-time, interaction with customers or suppliers in different time zone(s) (e.g. providing call centre services, or virtual IT support or medical services);
 - access to business-relevant expertise that is used in the conduct of the enterprise's activities;
 - collaboration with other businesses;
 - performance of services for customers or clients located in that other jurisdiction where such services require the physical presence of employees or other personnel of the enterprise in that other jurisdiction (e.g. training or repair services performed on the premises of the customer);
 - interaction with employees and other personnel of the enterprise, or of associated enterprises.

- The mere presence of the enterprise’s customers or suppliers in the jurisdiction of the home or other relevant place, or the fact that the home or other relevant place is in a different time zone from the enterprise’s jurisdiction, does not automatically imply that the test is met.
- The test will not be met if:
 - The engagement is intermittent or incidental, e.g. short occasional visits to a customer’s premises.
 - The enterprise allows an individual to work from a home or other relevant place solely to obtain or retain the individual’s services or to reduce business costs.
- Different considerations apply if an individual is the sole or primary person conducting the business of an enterprise. For instance, if a non-resident consultant spends an extended period in a jurisdiction and conducts most of the activities of her consulting enterprise from her home office, that home will constitute a place of business of the enterprise.

Our observations: *The updated guidance suggests that voluntary remote work arrangements generally do not give rise to a fixed place of business PE unless strategic or core business functions are performed there; however, the risk of such a PE arising increases where founders or other key executives habitually perform essential business functions from a home or other relevant place.*

Illustrative examples

Five examples are provided to illustrate the application of these principles. In one example, an enterprise is in Jurisdiction R and one of its employees spends 60% of his working time during a 12-month period working from his home in Jurisdiction S. The employee has an exclusively client-facing role and provides remote services to the enterprise’s clients in various jurisdictions. Once a quarter, he spends a day at a client’s premises in Jurisdiction S to review performance against the terms of the enterprise’s contract.

The updated guidance indicates that the employee’s home should be considered ‘fixed’ because it has been used to undertake activities related to the enterprise’s business throughout the 12-month period. While the employee has spent more than 50% of his working time there, other facts and circumstances, including the commercial reason for his presence in Jurisdiction S, must also be considered. The mere presence of the enterprise’s clients in Jurisdiction S does not, by itself, establish a commercial reason. The employee’s quarterly visits are intermittent and incidental and therefore do not amount to such a reason. Accordingly, despite exceeding the 50% working-time threshold, his home would not constitute a place of business of the enterprise and would not give rise to a fixed place of business PE in Jurisdiction S.

The takeaway

The updated guidance provides welcome and much-needed clarifications on the fixed place of business PE assessment of remote work arrangements, which have become increasingly common in recent years.

While no effective date is specified and the updated guidance will only be incorporated into the revised version of the OECD Model to be published in 2026, tax authorities of different jurisdictions, including Hong Kong, are expected to apply the updated guidance to interpret existing treaties that follow the OECD Model from the date of its publication. Businesses should therefore promptly review their cross-border remote work arrangements, assess potential PE exposure, and update policies, controls and cross-border work protocols accordingly.

Historically, having a PE mainly affected how profits were allocated between the head office and the PE. While this remains a relevant consideration, the introduction of global minimum tax rules under BEPS 2.0 Pillar Two and the adoption of domestic minimum top-up tax rules in many jurisdictions mean that

the existence of a PE may now have broader implications for in-scope multinational enterprises groups. Under these new rules, a PE is generally treated as a constituent entity, which may increase tax exposure and compliance obligations.

The updated guidance focuses solely on fixed place of business PE issues and does not address dependent agent PEs or other PE risks arising from cross-border remote work arrangements. However, a dependent agent PE may arise when an agent ‘habitually concludes contracts’ or ‘plays the principal role’ leading to the conclusion of contracts for the enterprise, regardless of whether the agent or the principal maintains a place of business in that jurisdiction. Given the inherently fact-specific and complex nature of PE determinations, professional advice should be sought where necessary.

Endnotes

1. The document entitled *2025 Update to the OECD Model Tax Convention* can be accessed via this link: https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/11/the-2025-update-to-the-oecd-model-tax-convention_c7031e1b/5798080f-en.pdf
2. The OECD has also updated various parts of the OECD Model. For a more detailed discussion of these updates, please refer to the *PwC Global Tax Policy Alert, 25 November 2025*, which can be accessed via this link: <https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-oecd-issues-2025-model-tax-convention-update.pdf>

Let’s talk

For a deeper discussion of how this impacts your business, please contact:

PwC’s Corporate Tax Leaders based in Hong Kong

Jeremy Ngai
+852 2289 5616
jeremy.cm.ngai@hk.pwc.com

Rex Ho
+852 2289 3026
rex.ho@hk.pwc.com

Cecilia Lee
+852 2289 5690
cecilia.sk.lee@hk.pwc.com

Jenny Tsao
+852 2289 3617
jenny.np.tsao@hk.pwc.com

Kenneth Wong
+852 2289 3822
kenneth.wong@hk.pwc.com

PwC’s International Tax Advisory Team

Jesse Kavanagh
+852 2289 1100
jesse.kavanagh@hk.pwc.com

Andrew D’Azevedo
+852 2289 5697
andrew.f.dazevedo@hk.pwc.com

International Tax News Flash

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For more information, please contact:

Long Ma
+86 (10) 6533 3103
long.ma@cn.pwc.com

Charles Chan
+852 2289 3651
charles.c.chan@hk.pwc.com

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