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Tax Alert – Canada

OECD Commentary 2025: Lower risk for remote work – Is it time to rethink your policy?

On 19 November 2025, the OECD released an update to the OECD Model Tax Convention and its Commentary. In particular, the Commentary on Article 5 (Permanent Establishment) includes additional guidance on cross-border remote work. This update clarifies when an employee's home or other "relevant place" outside the employer's home jurisdiction could create a permanent establishment (PE), or taxable presence, for the employer.

For employers with, or considering, work-from-anywhere policies, the updated Commentary brings much-needed clarity to one of the tax challenges created by employees working abroad.

Why is this significant?

A key concern for employers allowing employees to work in a country of their choice was the risk that the employee's foreign work location could be considered a PE for the employer, triggering corporate tax and other regulatory obligations in that jurisdiction.

Despite this risk, working outside the employer's home country remains an attractive benefit for employees, especially when the home jurisdiction has a higher cost of living or living conditions that are less appealing to an employee. The OECD acknowledges this growing reality and addresses the potential PE risk in the 2025 updated Commentary.

New test introduced by the Commentary

The updated Commentary provides guidelines that help reduce the likelihood that an employee's home office will be considered a PE, depending on the percentage of time worked there during the year and the existence of a commercial reason to use that home office. More specifically, the revised Commentary introduces an analytical framework that clarifies when use of a home or other relevant place, such as a second home, a holiday rental or the home of a friend or relative, in another country to carry out activities related to the business of an enterprise can amount to a fixed place of business for the employer.

Based on the Commentary:

- If an employee works from a home or other relevant place **less than 50% of their total working time** in any 12-month period, that place generally will **not** be considered a PE for the employer.
- If this threshold is met or exceeded, further analysis of the facts and circumstances is required, including determining whether there is a **commercial reason** for the employee's presence in that country.

The calculation of working time is driven by actual conduct, not formal schedules or employment contracts.

The Commentary notes that a commercial reason typically exists where the employee regularly interacts with local customers or suppliers or performs services at a local fixed place (e.g., a laboratory or factory). Conversely, allowing remote work solely for employee convenience or cost savings, meeting clients occasionally, or simply having clients in the same jurisdiction as the employee's home does **not** necessarily constitute a commercial reason. Reference may be made to the Commentary for five illustrative examples.

Potential effect of the Commentary

The updated Commentary generally reduces employer concerns around PE risk when employees work abroad solely for personal reasons. It should be noted that the updated Commentary is subject to reservations by certain jurisdictions; as such, the application of the Commentary to a specific foreign jurisdiction must be considered in the context of those reservations. For more information, see EY Global Tax Alert 2025-2439, *OECD 2025 Update to the OECD Model Tax Convention – key highlights*.

However, for employers to rely on this Commentary, employees should accurately record their days and responsibilities while working in a foreign country for employers to perform the factual analysis required to apply the tests outlined in the new Commentary.

Furthermore, the Commentary does not change other definitions of PE that may still apply when certain employees work abroad. For example, if an employee has authority to conclude contracts on behalf of the employer, they could still create a PE for the employer despite the new Commentary.

The risk of creating a PE is also not the only concern. In many jurisdictions, the mere presence of an employee may trigger income tax withholding and reporting obligations for the employer. Beyond tax considerations, remote work can also subject employers to local labour and employment laws, data privacy regulations and immigration requirements, just to name a few.

Conclusion

Offering flexibility in work location remains an attractive benefit for many employees. The new OECD Commentary likely reduces the risk that most rank-and-file employees who spend time working abroad for personal reasons will create a PE for the employer. However, it does not eliminate all risks and issues.

If you are considering offering or expanding your work-from-anywhere alternatives, ensure that all angles are adequately considered by conducting a thorough analysis of all the facts and circumstances.

Learn more

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