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The OECD publishes the 2025 update to the OECD Model Tax Convention

On 19 November 2025, the OECD published the 2025 update to its Model Convention (the "OECD MC"). This update was approved by the OECD Council on 18 November 2025 and will be incorporated into the new edition of the OECD Model Convention to be published in 2026.

The update addresses a number of issues, two of which are particularly noteworthy: (i) the concept of permanent establishment ("**PE**") as a fixed place of business (Article 5(1) OECD MC) in relation to cases of remote work, from the employee's home or other places not connected to the enterprise, without addressing PE as a dependent agent (Article 5(6) OECD MC); and (ii) tax residence for the purposes of the Convention in relation to double tax treaties ("**DTTs**") signed by the U.S.

Although some of the changes relating to the OECD MC must be incorporated into the DTTs in order to take effect, it is very likely that those relating to the concept of PE for work carried out from the employee's home or similar locations, and on residence for the purposes of DTTs signed by the U.S., will be used for interpretative purposes by tax administrations and courts in relation to existing DTTs, thereby rendering them particularly significant.

1. Permanent establishment and remote work

The most significant development in terms of its practical implications for multinational companies and groups is the updated Commentary on Article 5(1) OCDE MC regarding PE determination in remote working arrangements, including home offices and similar locations from which employees provide services, where the employer is not resident in the same State as the employee's place of residence.

In this regard, paragraphs 44.1 to 44.21 have been introduced into the Commentary on Article 5(1) OECD MC which provide analytical guidance for determining PE where remote work is conducted from an employee's home or other "relevant places" (e.g. second homes, rented holiday properties or relatives' residences) other than the premises of the employer or commercially related enterprises (customer, supplier or associated enterprise). The following core principles emerge from the new Commentaries, and are applicable to both home-based working and other "relevant places":

1. Whether an employee's home constitutes a fixed place of business for the enterprise requires a fact-specific analysis for each tax year, although general guidelines are provided for this purpose.
2. An employee working from home should not automatically lead to the conclusion that it constitutes a fixed place of business for the non-resident employer in the fiscal year in question.
3. The characterisation of a residence as a fixed place of business requires that it is used with the same intensity (permanence) as any other fixed place of business giving rise to a PE (see paragraph 28 of the Commentary), that no preparatory or auxiliary activities are carried out there (within the meaning of Article 5(4) of the OECD MC), and that it represents a place where the business activity is carried out, as opposed to being used occasionally by the employee.
4. In order for a residence (or other relevant places) to constitute a fixed place of business, two cumulative tests should be fulfilled:

    - **Test of 50% of total working time in the fiscal year:** Intermittent or incidental work from home is not sufficient to conclude that the home represents a fixed place of business for the purposes of Article 5(1)

of the OECD MC. The OECD considers work performed from home to be relevant for PE determination where, after assessing the facts and circumstances and the enterprise's policy, the employee performs their duties from home for at least 50% of their total working time for the enterprise during a 12-month period commencing or concluding in the tax year in question. However, if the 50% requirement is not fulfilled in a given fiscal year, continuous permanence in the same location across successive years may be considered in applying the test.

- **Commercial motivation test:** Where the working time test is satisfied, there must also be commercial reasons that could, directly or indirectly, justify permitting the employee to work from home. These reasons, which must also demonstrate a certain degree of stability or permanence and be assessed in light of the specific circumstances, include proximity to people or resources (customers, suppliers, associated enterprises, etc.) that are material to the development of the enterprise's business. In other words, the commercial reason must be directly related to the enterprise's activity and its specific business, and it will not be considered as such if the enterprise allows home-based working merely for employee retention or office cost reduction (when presence at that specific location is not relevant to the enterprise's business). To facilitate the application of this test, the OECD provides in the new paragraph 44.17 an illustrative and non-exhaustive list of what may constitute a commercial reason in practice, for example: holding meetings with clients; identifying business opportunities; identifying and contacting suppliers.

5. The new Commentary also contains examples to illustrate the application of the tests that determine whether a residence (or other relevant location) may or may not be considered as a fixed place of business and, therefore, as a PE for the purposes of Article 5(1) of the OECD MC.

Multinational groups with remote working policies should assess the implications of these new Commentaries to determine whether a PE (or several, depending on the number of employees affected) exists in each of the States where they have employees performing their duties from their residence or other relevant places. In particular, where employees work remotely, companies should monitor the duration and intensity of remote work, as well as be able to clarify the reasons (commercial or private) that led to this type of work scheme.

2. Tax residence for the purposes of the Convention

The new paragraph 27.1 of the Commentary on Article 4 of the OECD MC includes a comment (clarification) from the U.S. with potential implications for the DTTs signed by that country. For the U.S., when a State that generally taxes the worldwide income of its tax resident individuals nevertheless allows certain tax resident individuals to be taxed on a more limited basis (e.g., on territorial income or a specified amount unrelated to the worldwide income earned), such individuals will not be considered residents of that State for the purposes of any applicable DTT.

Many countries offer special tax regimes for individuals, whether linked to the fulfilment of certain conditions or the payment of certain fixed amounts regardless of the total amount of income earned. Although individuals benefiting from these regimes may have certain limitations when it comes to accessing and benefiting from DTTs of the State in which they are tax resident (as is the case, for example, in Spain with the so-called *Beckham* regime), they must now monitor the specific situation with the U.S. and how it affects any US-source income they earn.

3. Other changes

The 2025 update of the OECD MC addresses other issues, among which the following merit particular attention:

- An optional PE clause (Article 5), such as that used in a number of DTTs and linked to the exploration and extraction of natural resources (with a lower time threshold for considering that a PE exists than that in Article 5(1) of the OECD MC);
- Clarification of the treatment of related-party transactions (mainly loans) for the purposes of Articles 7 and 9 of the OECD MC, in relation to Article 24 of the OECD MC, among others, in order to reduce the risk that

certain States may consider non-deductibility of interest arising from a reclassification of the transaction as an internal matter outside the scope of the DTT;

- Coordination of the Commentary on Article 25 of the OECD MC with the amendments relating to Amount B of the OECD Transfer Pricing Guidelines;
- Inclusion of new Commentary related to the new paragraph added to Article 25 of the OECD MC on the relationship between this provision, and DTTs in general, with the dispute resolution procedures of the GATS or with agreements on reciprocal investment protection; and
- Addition of certain clarifications in the Commentary on Article 26 of the OECD MC on the scope of confidentiality rules in relation to the exchange of tax information.

Similarly, this new version of the OECD MC contains updated observations and reservations on the various articles and commentaries thereto, both from OECD member states (new and old members) and from third countries.

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