



Changes to Commentary of OECD's Article 5

In response to the changing work patterns and the teleworking trends that persist since the COVID-19 pandemic, the OECD has updated its commentary (the "Commentary") of its Model Tax Convention (the "MTC") for Article 5: Permanent Establishment. The revised guidance clarifies when an employee's home (or another personal workspace abroad) can be treated as a "place of business" of the enterprise and therefore create a PE.

To clarify, the update does not change the treaty wording of Article 5. Specifically, it clarifies how the existing "fixed place of business" test should be applied to modern remote-working patterns, including home offices.

The revised Commentary introduces clearer guardrails, most notably a 50% working-time reference point and a business-purpose ("commercial reason") test, to distinguish low-risk, incidental remote work from arrangements that may amount to a PE.

The key changes to remote working, at a glance, are as follows:

Amendment	Explanation
<p>Home office at the disposal of the enterprise</p>	<p>The 2025 update removes the older, narrower home-office text (former paragraphs 18–19) and replaces it with a dedicated section (paras 44.1–44.21) on cross-border working from a home or other relevant place (e.g., second home, holiday rental, friend/relative's home).</p> <p>The section is aimed at remote work performed from a private place in the other State that is not the enterprise's premises and not a customer/supplier/associated enterprise premises.</p>
<p>New conditions and clarifications on the analysis required</p>	<p>The new section clarifies how to apply Article 5(1) to remote work:</p> <ul style="list-style-type: none"> • Assess the relevant period only: PE is determined based on the facts and circumstances during the period under review (not past/future patterns); • "Fixed" still matters: the place must have sufficient permanence; recurring use can be assessed over time; what matters is time spent working there (not upkeep costs); • <50% working-time (12 months): where the individual works from the home/other place less than 50% of total working time over a relevant 12-month period, that place would generally not be treated as the enterprise's place of business. Working time is driven by actual conduct (policies help only if they match reality); • ≥50% → facts & circumstances + "business nexus": if the individual works there at least 50%, the key question becomes whether there is a commercial / business reason for the enterprise's activities to be carried on in that State.
<p>New clarifications on what <i>may</i> constitute a 'commercial reason'</p>	<p>The Commentary indicates that a business nexus may exist where the individual's physical presence in the State facilitates the enterprise's business in a meaningful way. Indicators include situations where:</p> <ul style="list-style-type: none"> • Regular meetings or direct interaction with customers in that State that benefit from physical presence; • Building a new customer base or identifying business opportunities that require being locally present; • Identifying suppliers, managing supplier relationships, or overseeing contractual arrangements in that jurisdiction; • Providing real-time or near real-time services across time zones (e.g., call centres, virtual IT support, medical services) where location materially supports service delivery; • Being located near institutions or professionals whose expertise is relevant to the enterprise's activities (e.g., research collaboration with a university); • Working closely with other businesses where proximity supports joint activity or cooperation; • Performing services for customers that require physical presence in that State (e.g., training, repairs at client premises);

- Meaningful interaction with employees or personnel of the enterprise or associated enterprises where physical presence facilitates the business.

These indicators apply regardless of whether the interaction is with independent third parties or associated enterprises.

A central clarification is what does not meet the "business nexus" condition:

New clarifications on what *does not* constitute a 'commercial reason'

- It is not met where remote work is allowed solely to obtain or retain the individual's services;
 - It is not met where remote work is allowed solely to reduce office costs;
- It should not be assumed merely because customers/suppliers (or an associated enterprise) are present in that State, or because of a time-zone difference. The Commentary clarifies that engagement with customers or suppliers that is merely intermittent or incidental does not establish that the home is a place of business of the enterprise;
- Paragraph 5(4) on preparatory/auxiliary services, as well as paragraph 5(5) on dependent agents still need to be considered separately.

Removal of Ambiguity

The 2025 update also deleted outdated examples and wording that caused confusion. Previously, the commentary focused on whether the employer had "required" an employee to work from home (explicitly or implicitly) as a key test for a home office PE. This was subjective and led to uncertainty. The new guidance drops the "employer requirement" criterion.

FINAL REMARKS

The 2025 changes to the Commentary on Article 5 provide welcome clarity on how cross-border remote work should be analysed. By introducing clearer reference points and refining the concept of business nexus, the OECD has reduced uncertainty while reinforcing that outcomes remain highly fact-specific.

Our team is at your disposal to assess existing remote work arrangements, review internal policies, and support you in managing potential PE exposure in light of the updated guidance.



Publisher

WTS Cyprus
wtscyprus.com



Contact Partner/Editorial

Nicolas Kypreos | nicolas.kypreos@wtscyprus.com
Constantinos Leontiou | constantinos.leontiou@wtscyprus.com
Pambos Chrysanthou | pambos.chrysanthou@wtscyprus.com
Nicos Tapolos | nicos.tapolos@wtscyprus.com

Information on our Global contacts can be found [here](#)

Disclaimer

This WTS Global information does not constitute advice and is intended solely to provide a general presentation of selected topics. The explanations and presentations contained herein therefore neither claim to be complete nor are they suitable as a substitute for advice in individual cases.

No responsibility is taken for the correctness of the contents. In case of questions regarding the topics mentioned herein or other technical topics, please contact your WTS Global contact person or one of the contacts mentioned above.