Analysis of the OECD's 2025 Commentary

Análisis de los Comentarios 2025 de la OCDE

Antonio ALVARADO WEFFER*

Contribuciones por Hugo ARRIBAS SALDAÑA**

Resumen: Este artículo analiza la actualización de 2025 de los Comentarios al Modelo de Convenio Tributario sobre la Renta y sobre el Patrimonio de la OCDE, centrándose en el nuevo marco interpretativo aplicable a los establecimientos permanentes derivados del trabajo transfronterizo desde el domicilio u otro lugar relevante. La revisión sustituye los antiguos párrafos 18 y 19 del Comentario al Artículo 5 por un conjunto de indicadores operativos articulados en torno al concepto de razón comercial y a un umbral referencial sobre el tiempo de trabajo, sin modificar el texto del propio Artículo 5. Asimismo, se abordan las modificaciones complementarias relativas al régimen opcional de actividades extractivas sobre el Artículo 5, la interacción entre el Artículo 9 y las normas de

* Antonio A. Weffer is a tax principal in Baker McKenzie's Tax Practice Group and the head of the firm's transfer pricing practice in Luxembourg. The author can be contacted at Antonio.Weffer@baker mckenzie.com.

** Hugo Arribas Saldaña collaborated in this article. He is a tax trainee in Baker McKenzie's Tax Practice Group in Luxembourg.

limitación de deducibilidad de intereses derivadas de la Acción 4 de BEPS, la incorporación del nuevo párrafo 6 al Artículo 25 sobre el procedimiento amistoso en el contexto del AGCS, y las aclaraciones al Artículo 26 sobre usos secundarios de la información intercambiada.

Palabras clave: Establecimiento permanente, teletrabajo transfronterizo, Modelo OCDE, razón comercial, precios de transferencia, procedimiento amistoso, intercambio de información

Abstract: *This article examines the 2025 update to the Commentary on the OECD Model Tax Convention on Income and on Capital, focusing on the new interpretive framework applicable to permanent establishments arising from cross-border work performed at a home or other relevant place. The revision replaces the former paragraphs 18 and 19 of the Commentary on Article 5 with a set of operational indicators built around the concept of commercial reason and a working-time reference point, without amending the text of Article 5 itself. It also addresses ancillary amendments concerning the optional extractives provision under Article 5, the interaction between Article 9 and the interest-deductibility limitation rules derived from BEPS Action 4, the insertion of a new paragraph 6 into Article 25 on the mutual agreement procedure in the context of GATS, and the clarifications to Article 26 on secondary uses of exchanged information.*

Keywords: *Permanent establishment, cross-border remote work, OECD Model, commercial reason, transfer pricing, mutual agreement procedure, exchange of information.*

Sumario:

I. INTRODUCTION. II. PART I, REVISION OF COMMENTARY ON ARTICLE 5 CONCERNING PES AND REMOTE WORKING. 1. *Historical Development of PEs and Article 5 of the OECD Model*. 2. *Analysis of the 2025 Commentary Revisions on PEs and Remote Working*. 3. *Analysis of Scenarios. 4. Practical Implications and Future Directions*. III. PART II, REVISION OF COMMENTARIES ON ARTICLES 5, 9 AND 25, AND AMENDMENTS ON ARTICLE 25. 1. *Article 5 on Extractives: Optional Provision.* 2. *Article 9 on Associated Enterprises: Transfer Pricing Adjustments.* 3. *Article 25 on Mutual Agreement Procedure (MAP).* 4. *Article 26 on Exchange of Information*. BIBLIOGRAPHY.

I. INTRODUCTION

This article concentrates on the topic most extensively developed in the OECD's Model Tax Convention (the "OECD Model" or the "Model") latest Commentary, home-office and permanent establishments ("PE"), while also addressing ancillary issues, namely the clarifications on natural resources extraction, specifications for transfer pricing in financial transactions and their interaction with interest-deductibility rules, the expansion of permitted uses of and taxpayer access to information exchanged and the confirmation of the role of competent authorities in determining treaty scope for dispute-resolution mechanisms under the General Agreement on Trade in Services ("GATS").

Sustained fiscal deficits across major economies are reshaping incentives for tax administrations and their willingness to assert additional taxing rights. Recent evidence points to a broad-based imbalance, in 2023 the average general government fiscal balance across OECD countries was -4.6% of GDP, and in 2024 a clear majority of EU–OECD members still

recorded deficits, underscoring the breadth of the phenomenon and the pressure to rebuild revenues.[1]

Compounding this, the IMF warns that, absent credible medium-term consolidation, global public debt is set to approach 100% of GDP by the end of the decade, with material upside risks in adverse scenarios, heightening the urgency for revenue-raising measures.[2]

Against this backdrop, tax collection and the localisation and attribution of value and taxing rights across jurisdictions are more critical than ever to ensure that value generated by multinational enterprise (MNE) does not escape taxation. In this respect, Double Tax Conventions remain one of the most valuable international standards for resolving and optimising cross-border tax outcomes.

As uncertainty rises and the need to raise revenue grows, States seek tighter treaty drafting and clearer interpretive guidance to reduce technical mismatches and close unintended gaps. The policy intent is to minimise double taxation and non-taxation, increase predictability for cross-border investment, and ensure that nexus rules reflect the economic organisation of modern business.

Over time, two principal treaty models have crystallised: the OECD Model, dominant among advanced and many emerging economies, and the United Nations Model Double Taxation Convention, which reflects the priorities of developing

1 International Monetary Fund, "Fiscal Policy under Uncertainty", April 2025. See also: International Fiscal Monitor, "Rising Global Debt Requires Countries to Put their Fiscal House in Order", IMF Blog, 23 April 2025, available at: https://www.imf.org/en/blogs/articles/2025/04/23/ rising –global–debt-requires-countries-to-put-their-fiscal-house-in-order.

2 OECD, *Government at a Glance 2025*, OECD Publishing, Paris, 2025. See also: OECD Statistics Blog, "What is government deficit and why does it matter?", July 29, 2025, available at: https://oecdstatistics.blog/2025/ 07/29/what-is-government-deficit-and-why-does-it-matter/.

countries by preserving a larger share of source-State taxing rights in certain articles.

The OECD Model is highly salient in the current international environment, and its drafting and interpretation are guided by the OECD Model Commentary. Since 1963, the OECD Model has served as the principal benchmark for the negotiation, interpretation, and application of DTCs and today forms the basis of a network of more than 3,000 tax treaties worldwide[3].

Since 2010, the OECD has repeatedly updated its Model and Commentary, notably through the 2017 comprehensive update and the treaty-related measures implemented via the Multilateral Instrument, and through 2018 guidance on the attribution of profits to PEs following BEPS Action 7 (including commissionaire, procurement, online advertising and anti-fragmentation examples). On 18 of November of 2025 the OECD released its most recent milestone by updating their Commentary on the Model.

One of the most prominent post-pandemic developments, and long considered an elephant in the room, is remote work. For definitional clarity, international organisations characterise telework (also referred in this paper as "remote work") as work performed away from the employer's premises, typically from the worker's home or another relevant place, using information and communication technologies; this formulation appears across OECD analytical work and international statistical standards[4].

---

3 OECD, Tax Treaties, available at: https://www.oecd.org/en/topics/tax-treaties.html.

4 OECD, *Teleworking, Workplace Policies and Trust*, OECD Publishing, Paris, 2024, available at: Teleworking, workplace policies and trust (EN).

See also: OECD/Eurostat, *Measuring Telework in the COVID-19 Pandemic*, No. 314, OECD Publishing, Paris, 2021, available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/07/measuring-telework-in-the-covid-19-pandemic_4d514ae3/0a76109f-en.pdf.

During 2020, measured remote work rates spiked to around 47% of the employed at peak moments of lockdowns in France and the United Kingdom, with Australia reaching comparable levels by year-end; relative to pre-pandemic baselines these implied increases of 25%, 20% and 15% respectively.

At the same time, longitudinal survey data show a measured shift back to on-site presence: the share of workers entirely at the workplace rose from 36% in 2023 to 41% in 2024, even though preferences for hybrid work remain strong. Among teleworkable jobs, the share of hybrid arrangements rose from 35% in 2022 to 45% in 2023 and eased slightly to 44% in 2024.[5]

Luxembourg's labour market offers a distinctive environment in which telework-related nexus issues may arise and be tested. By late 2024 the country employed about 489,000 workers, with roughly 47% commuting from abroad and around 126,000 coming from France. Only one in four employees held Luxembourgish nationality and foreign nationals represented about 47% of residents, making mobility and cross-border dynamics central to labour supply. Commuter stocks from Belgium and Germany are sizeable, and average one-way distances approach 54 kilometres from Belgium, 48 from Germany, and 45 from France, which heightens the time-cost salience of hybrid remote work.[6]-[7]

---

5 Eurofound, "Chapter 5: What Does the Future of Telework Look Like? Telework in transition", Eurofound, Dublin, 2025, available at: https://eurofound.shorthandstories.com/living-and-working-in-europe-2024/introduction/telework-in-transition/5-what-does-the-future-of-telework-look-like/.

6 STATEC Luxembourg, "Regards 01/25 - Panorama of the Luxembourg Labour Market on 1 May, STATEC, Luxembourg", Press Release, Luxembourg, 2025, available at: https://statistiques.public.lu/en/publications/series/regards/2025/regards-01-25.html.

7 STATEC Luxembourg, "In 2024, Population Growth Slowed due to Low Fertility and a Decline in Immigration", Press Release, Luxembourg,

Telework adoption is material yet uneven. Surveys show roughly one third of employees still telework regularly and a majority prefer at least one day a week at home. Frequent teleworking stabilises near 26% for residents but only around 4% for cross-border workers, while weekly telework is common among residents and rare among commuters. Home office remains high for both groups, yet intensity among commuters is rationally constrained by tax tolerances that allow up to 34 telework days per year with France, Belgium and Germany, and by the EU social-security framework that preserves Luxembourg affiliation when telework in the State of residence is between one quarter and less than one half of total working time.[89]

Cost-of-living differentials reinforce commuting and hybrid patterns. Eurostat places Luxembourg's household final consumption price level around 133% of the EU average in 2024, with food and non-alcoholic beverages near 125%, noticeably above neighbouring countries. These gaps incentivise workers to reside in adjacent regions while maintaining employment in Luxembourg, supported by an extensive cross-border transport network of about thirty-eight lines integrated with free domestic public transport up to the border. Each permitted remote day

2025, available at: https://statistiques.public.lu/en/actualites/2025/stn16-population-2025.html.

8 Chambre des Salariés Luxembourg (CSL), Quality of Work Index Survey 2024, as reported in: 26% of Luxembourg Residents, 4% of Cross-Border Workers Report Frequent Teleworking, The Chronicle, Luxembourg, 2025, available at: https://chronicle.lu/category/surveys-reports/55445-26-of-luxembourg-residents-4-of-cross-border-workers-report-frequent-teleworking.

9 Chambre des Salariés Luxembourg (CSL), Quality of Work Index Survey 2024, as reported in: Teleworking in Luxembourg: Trouble Ahead?, Paperjam, Luxembourg, 2024, available at: https://en.paperjam.lu/article/teleworking-in-luxembourg-trou.

reduces commuting dead time and expenses, though tax and social-security thresholds cap feasible frequency for non-residents.[10]

Taken together, Luxembourg's combination of high cross-border employment, a large foreign-resident share, binding telework thresholds, and differential price levels creates a laboratory-like setting for the application of the 2025 OECD Commentary on Article 5.

Beyond the Grand Duchy, several jurisdictions create a fertile ground for the questions addressed in this paper: they attract sizeable cohorts of full-remote workers and, at the same time, function as business hubs where market-facing activity is routine:

- In Portugal, Lisbon remains in Savills' global top five and the Algarve in the top ten for executive remote work, evidence of embedded remote-resident communities and regular EU time-zone client servicing.
- The United Arab Emirates admits foreign-employed professionals under a renewable one-year virtual work visa and overlays that permissive residence with free-zones, banking and international connectivity, so that basing teams in Dubai or Abu Dhabi ordinarily coincides with prospecting and regional service delivery.[11]

10 Eurostat, "Household Consumption: Price Levels in 2024, Eurostat News", June 19, 2025, available at: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250619-1.

11 UAE Government, "Residence Visa for Working Outside the UAE", available at: https://u.ae/en/information-and-services/visa-and-emirates-id/residence-visas/residence-visa-for-working-outside-the-uae.

- Spain combines Málaga's ascent in Savills' index with a national telework framework, which stabilises residence for non-EU remote staff and anchors substantive EU client engagement.[12]
- Thailand and Indonesia both pair mature coworking ecosystems with regional supplier and client chains, making commercially motivated activity a feature rather than a coincidence.
- Estonia's e-Residency continued to scale in 2024 and achieved record company formation figures, demonstrating a digital base for organising and operating real businesses.[13]

Taken together, these hubs exhibit both scale in telework and embedded business ecosystems. That mix naturally supplies the permanence, regular use and commercial purpose emphasised by the OECD's 2025 Commentary on Article 5 for home-office and other relevant place cases, making them plausible settings in which PE questions and downstream profit-attribution under Article 7 will be tested in practice.

Beyond the home-office question, the 2025 Commentary confirms the continued relevance of the PE rules and further refines their application to capital-intensive sectors, most notably natural resource extraction.

This development is timely. Global oil demand is projected to grow by 0.7 to 0.8 million barrels per day annually in 2025 and 2026, with all net refining throughput gains concentrated in non-OECD regions. This sustained growth underscores the economic

---

12 Savills World Research, "Executive Nomads 2025: Quality of Life is a Priority in Location Choices", Savills Impacts, October 2025, available at: https://impacts.savills.com/social-change/executive-nomads-2025-quality-of-life-is-a-priority-in-location-choices.html.

13 Invest in Estonia, "Estonian e-Residency Attracts Record Interest and Revenue in 2024", Estonian Business and Innovation Agency, 2024, available at: https://investinestonia.com/estonian-e-residency-attracts-record-interest-and-revenue-in-2024.

weight of extractive operations in source jurisdictions that have historically sought broader taxing rights over such activities.[14]

The same upward trajectory is evident in other critical minerals. Lithium output grew by 18% in 2024 and production is expected to continue rising in line with accelerating demand from the energy transition. The geopolitical dimension of this sector is intensifying, as resource-rich jurisdictions increasingly assert fiscal and regulatory control over their extractive industries.[15]

The political landscape in several producing regions adds a further layer of uncertainty. Venezuela is a case in point, where the prospect of structural political change may generate new bilateral treaty negotiations and investment frameworks in the near term.

Moreover, the global environment for international taxation is unmistakably in flux. From a transfer pricing perspective, both tax audits and negotiation procedures with tax authorities are expanding at a staggering pace, as a benchmark, the UK alone closed 128 transfer pricing enquiry cases in 2023 and 2024. This is particularly evident in the field of financial transactions, where we are seeing a surge in complex treasury structures and a marked increase in the technical sophistication of acquisition structures employed by financial sponsors such as infrastructure funds and private equity.[16]

Beyond the Commentary updates, a central pillar is the intensifying exchange of tax information to boost coordination and effectiveness against fraud and abusive practices. This acceleration reflects the rapid implementation of OECD

14 IEA, *Oil Market Report*, IEA, Paris, 2025, available at: https://www.iea.org/reports/oil-market-report-may-2025.

15 IEA, *Critical Minerals Market Review 2025*, IEA, Paris, 2025, available at: Global Critical Minerals Outlook 2025 – Analysis - IEA.

16 UK Government, "Transfer Pricing and Diverted Profits Tax Statistics: 2023 to 2024", available at: Transfer Pricing and Diverted Profits Tax statistics: 2023 to 2024 - GOV.UK.

transparency standards, under which more than 120 jurisdictions now have Country by Country reporting[17]. Within the EU, the Directive on Administrative Cooperation provides the legal backbone for automatic exchanges.

Hence, in my opinion, the context in which the OECD is releasing this latest update is both a product of, and a response to, the many open fronts in international taxation. These technical clarifications serve as critical touchpoints that help keep the global economic tax architecture operating as a well-oiled system.

II. REVISION OF COMMENTARY ON ARTICLE 5 CONCERNING PES AND REMOTE WORKING

1. *Historical Development of PEs and Article 5 of the OECD Model*

The theoretical definition of PE emerges from Article 5(1) OECD MC as commented in the treatise: [18]

> "[...] permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on."

Each element in that definition is cumulative and functionally motivated:[19]

---

17 OECD, *Country-by-Country Reporting – Compilation of 2025 Peer Review Reports: Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, 2025, available at: https://doi.org/10.1787/e3c07579-en.

18 OECD, *Model Tax Convention on Income and on Capital*, OECD Publishing, Paris, 2017 (2025 updated), Article 5(1).

19 VOGEL, Klaus, *Klaus Vogel on Double Taxation Conventions*, Wolters Kluwer, 4th edition, Alphen aan den Rijn, 2015, p. 334.

- First, there must be a place of business, the term is not restricted to ownership, what matters is that the place is at the enterprise's disposal in a sense that allows business functions to be performed from it.
- Second, the place must be fixed, which connotes not only a geographic point but also a sufficient degree of permanence.
- Third, the enterprise's business must be carried on through that fixed place, requiring a functional link between the place and the core revenue-generating activity, not mere incidental presence.

International tax treaties developed under the OECD Model proceed from a practical impasse that predates the Model itself, the simultaneous assertion of taxing power by the residence State and by the source State. That overlap produces juridical double taxation, the imposition of comparable taxes by two States on the same taxpayer in respect of the same subject matter and period.

The OECD Model was designed precisely to clarify, standardise, and confirm solutions to that problem, so that cross-border commerce would not be chilled by unrelieved double imposition or, conversely, by indeterminate exposure to source taxation without a meaningful nexus.[20]

Within that architecture, the PE operates as the gatekeeper to source-State taxation of business profits since it supplies the legally cognisable minimum connection that justifies taxing a non-resident's entrepreneurial returns in the State where the enterprise intervenes in economic life, while leaving other returns to the State of residence and preserving treaty relief mechanisms to eliminate the residual overlap.

From the League of Nations prototypes to the OECD's early work, treaty practice progressively converged on PE as the organising threshold for source-state jurisdiction over business

20 VOGEL, Klaus, *Klaus Vogel on …cit.*, p. 297.

profits. The OECD's 1963 Draft Convention and, more decisively, the 1977 Model settled the fixed-place definition and the dependent-agent limb, codified the special rule for construction sites, and aligned nexus with the separate-entity fiction and arm's-length attribution in the business-profits article.

That architecture, definition in Article 5, attribution in Article 7, became the backbone of an expanding bilateral treaty network. Beginning in 1992, the OECD adopted an ambulatory approach: periodic updates to the Model and, especially, its Commentary would refine interpretation without disturbing the core text.[21]

Over time, these refinements elaborated the permanence standard, clarified commercial and geographical coherence (so that dispersed activity could constitute a single place of business when it forms a coherent whole), and tightened the doctrinal link between Article 5's threshold and Article 7's attribution discipline, all with the stated aim of harmonising treaty practice to eliminate juridical double taxation while keeping administrability and neutrality intact.[22]

A second formative phase arrived with the BEPS project. In its final report on Action 7 published in October 2015, the OECD re-anchored the agency nexus in substance and curtailed exploitative uses of the specific-activity exclusions. Commissionaire and similar arrangements were addressed by focusing on the regular conclusion of contracts to be performed

---

21 Roberts & Holland LLP, "When Does E-Commerce Result in a Permanent Establishment? The OECD's Initial Response", available at: https://www.robertsandholland.com/news-and-insights/when-does-e-commerce-result-in-a-permanent-establishment-the-oecds-initial-response/.

22 OECD, *Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce?*, OECD Publishing, Paris, 2004, available at: https://web-archive-storage.oecd.org/aemint-web-archive-prod/web-archive/3e/3ea28b96b77c39fc7847ebfd6fb64fe9e113cc8a1da8144ec337d02078004c1e.pdf.

by the foreign enterprise; cohesive operations could no longer be fragmented into nominally auxiliary components to escape source taxing rights; and the Commentary was revised to deal with contract-splitting around the twelve-month construction threshold.[23]

These policy refinements were transmitted across the global treaty network through successive negotiation cycles and, crucially, via the Multilateral Instrument from 2017 onward, which allowed jurisdictions to implement treaty-related BEPS measures, including Articles 12–15 on artificial avoidance of PE status, alongside existing treaties without full renegotiation.[24]

The post-2017 period consolidated those BEPS-driven adjustments into the Model and its Commentary while keeping Article 5's text intact. The OECD's strategy in this period has been to enhance administrability by deepening interpretative guidance rather than reopening the definition itself. In November 2025 the OECD Council approved an update that will be incorporated into the condensed and full editions of the Model in 2026.

Among other changes, the Commentary introduces an analytical framework that supplies indicators and examples for applying the fixed-place test to home offices, second homes and similar constellations, and it adds an optional clause allowing a bilateral time threshold for certain extractive activities. The historical point is that the OECD has continued to refine the operation of Article 5 through Commentary, preserving the

---

23 OECD, *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, 2015, available at: https://doi.org/10.1787/9789264241220-en.

24 OECD, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, OECD Publishing, Paris, adopted 24 November 2016, opened for signature 7 June 2017, available at: https://www.oecd.org/tax/beps/beps-actions/action15/.

definitional core while responding to new organisational forms of cross-border activity.[25]

Luxembourg's stance on PE reforms has been pragmatic and broadly aligned with the OECD consensus: it signed the BEPS Multilateral Instrument on 7 June 2017, ratified it on 9 April 2019, and saw it enter into force domestically on 1 August 2019. It also notified all 81 in-force treaties as Covered Tax Agreements, adopted the Principal Purpose Test, strengthened MAP, and committed to mandatory binding arbitration, thereby enabling PE-related changes to flow through the network where partner countries have compatible MLI elections, while leaving Article 5's text untouched and relying on compatibility clauses to operate alongside existing treaties.[26]

At home, recent decisions by Luxembourg courts have reaffirmed a substance-over-form, evidence-driven application of treaty PE criteria, rejecting either claimed or asserted PEs where parties failed to prove sustained business carried on "through" a fixed place, so the practical posture is implementation via the MLI and rigorous case-by-case application rather than any doctrinal departure.

2. *Analysis of the 2025 Commentary Revisions on PEs and Remote Working*

On 13 October 2025, the OECD's Committee on Fiscal Affairs (CFA) approved the contents of the latest update to the OECD Model. The OECD Council formally adopted that update

---

25 OECD, *The 2025 Update to the OECD Model Tax Convention*, OECD Publishing, Paris, 2025, available at: https://doi.org/10.1787/5798080f-en, Changes Summary, p. 1.

26 Tiberghien, "The MLI Ratification Process Formally Completed - What Happens Next for Luxembourg?", April 10, 2019, available at: https://www.tiberghien.com/en/1531/the-mli-ratification-process-formally-completed-what-happens-next-for-luxembourg.

at its 1502nd session on 18 November 2025, with the note of changes released to the public the following day.[27]

Critically, the 2025 Update leaves the text of Article 5 untouched. Its intervention is interpretive, since it revises and substantially expands the Commentary to Article 5 to address modern working arrangements and to provide greater certainty around the conditions under which cross-border remote work gives rise to a fixed-place-of-business permanent establishment.[28]

As regards procedure, the revised Commentary paragraphs on remote working emerged from the CFA and its technical working parties, most notably Working Party 1, and proceeded to Council adoption without a dedicated public consultation on the specific drafting prior to approval.

Immediately after publication, however, the OECD launched a separate public consultation on global mobility, with submissions due by 22 December 2025 and a public meeting scheduled for January 2026. Although the scope of that consultation centred on personal income tax and employment income, it also expressly invited feedback on corporate tax issues, including PE implications. That consultation was after, and not constitutive of, the adoption of the 2025 Update.[29]

---

27 OECD, The 2025 Update to the OECD Model Tax Convention, OECD Publishing, Paris, approved by the Committee on Fiscal Affairs on 13 October 2025 and by the OECD Council at its 1502nd session on 18 November 2025 (document C(2025)159), published 19 November 2025, available at: https://www.oecd.org/en/publications/the-2025-update-to-the-oecd-model-tax-convention_5798080f-en.html.

28 *Cf.* OECD, *The 2025 Update…*, *cit.*, p. 1.

29 OECD, *Public Consultation Document: Tax Challenges Arising from the Digitalisation of the Economy - Global Mobility*, OECD Publishing, Paris, 2025, available at: Public Consultation Document: Global Mobility of Individuals.

The 2025 expansion of the Commentary to Article 5 is best understood as an administrability response to persistent interpretive uncertainty in home-office cases. Prior Commentary language, specifically the guidance in former paragraphs 18 and 19, turned on whether the employer had implicitly required the employee to work from home, or whether it had failed to make office space available. In practice, those tests proved difficult to apply consistently: the line between implicit requirement and mere tolerance of home working was indeterminate, and enforcement outcomes varied considerably across jurisdictions.[30]

The 2025 Update withdraws those constructs entirely and replaces them with a framework of operational markers oriented around the concept of commercial reason, that is, whether there is an objective business rationale for carrying on the enterprise's activity from the location in question, rather than the arrangement reflecting personal convenience or internal cost-saving.[31]

In this way, the revised Commentary provides a general presumption against a fixed-place PE where the relevant benchmark is not met, while requiring a substantive business justification where it is exceeded, all without touching the text of Article 5 itself. The new guidance is set out in paragraphs 44.1 through 44.21, under the rubric "Cross-border working from a home or other relevant place," replacing the deleted paragraphs 18 and 19.

A first observation concerns the normative character of the 50% of total working time reference point. The OECD does not present this figure as a dispositive threshold embedded in the Convention. It is, rather, a contextual benchmark within the Commentary's inherently fact-sensitive framework, a

30 OECD, *Model Tax Convention on Income … cit.* , paras. 18-19 (now deleted by the 2025 Update).

31 *Cf.* OECD, *The 2025 Update…*, *cit*., paras. 44.1-44.2.

distinction that carries real weight for treaty interpretation.[32] Where an employee spends less than 50% of total working time at the home or other relevant place, the Commentary indicates that the location would generally not be considered a place of business of the enterprise.

Nevertheless, the Commentary is careful to note that exceptions, while not expected to arise in most cases, are not categorically precluded, preserving a margin for atypical fact patterns. In doctrinal terms, the benchmark functions as soft safe-harbour guidance: it is designed to align administrative practice across jurisdictions without altering the legal standard in Article 5(1), which continues to rest on the established triad of the existence of a place of business, its fixed character, and the carrying on of business through that place.[33]

A second feature, and arguably the centre of gravity of the revision, is the commercial reason inquiry. The new paragraphs articulate both a positive and a negative list of relevant considerations. On the positive side, the Commentary identifies proximity to customers or suppliers, access to local resources and expertise, the facilitation of collaborative interactions, and real-time service provision across time zones as indicators capable of supporting the conclusion that a commercial reason exists.[34]

On the negative side, remote work arrangements permitted solely to retain a particular employee, or solely to reduce office overhead, are expressly identified as insufficient to establish the enterprise's place of business at the location in question.[35]

---

32 *Cf.* OECD, *The 2025 Update*…, *cit.*, para. 44.4.

33 OECD, *Model Tax Convention on Income … cit.,* Article 5(1) and Commentary on Article 5, paras. 1–10.

34 *Cf.* OECD, *The 2025 Update*…, *cit.* . , para. 44.6.

35 *Cf.* OECD, *The 2025 Update*…, *cit.* . , para. 44.7.

The practical effect of this shift is significant. The earlier test, which asked whether the enterprise had explicitly or implicitly required the individual to use the home location, is now deleted along with former paragraphs 18 and 19. In its place, a functional-commercial inquiry aligns the analysis more closely with economic substance.[36]

Practically, this places a premium on contemporaneous documentation: client engagement calendars, records of supplier meetings, collaboration logs, and time-zone service records will carry greater evidentiary weight than contractual formulations, which the Commentary now characterises as merely evidential insofar as they accurately reflect actual conduct.

A third point concerns the permanence requirement and the treatment of recurrent short periods of use. The OECD reiterates that a fixed place of business requires a degree of permanency, and that short, isolated periods of use, for example three consecutive months within a twelve-month period, will typically not satisfy that requirement.

However, the 2025 Commentary makes clear that recurrent short periods across several years may, in combination, be sufficient to establish permanence, with the analysis focusing on the time actually spent carrying on business activities rather than on the mere retention of a property interest.[37]

The practical implication is that enterprises cannot confine their analysis to individual episodes: intermittent but systematic recourse to the same home or relevant place may, over time, foreclose the argument that its use is purely temporary. This conclusion is consistent with the pre-existing guidance on the temporariness of fixed places but is now explicitly articulated within a remote-working context.

---

36 *Cf.* OECD, *The 2025 Update…*, *cit.*, para. 44.8.

37 *Cf.* OECD, *The 2025 Update…*, *cit.*, para. 44.3.

Interaction with Article 5(4). A fourth aspect of the revised Commentary is its treatment of the preparatory or auxiliary carve-out in Article 5(4). The Commentary explicitly preserves that carve-out: even where a home or other relevant place satisfies both the fixity and commercial-reason requirements, no PE would arise if the activities carried on there are limited to preparatory or auxiliary functions.[38]

This preserves the analytical sequencing that practitioners will recognise from the BEPS Action 7 guidance: first, assess whether a place of business exists and is fixed; second, determine whether there is a commercial reason for the presence; and third, consider whether the activities qualify as preparatory or auxiliary to defeat the PE conclusion.

The Commentary makes clear that high time percentages combined with sustained client engagement or time-zone-driven service provision weigh toward a PE finding, whereas high time percentages coupled with intermittent or incidental engagement do not.

Country observations and reservations. Notwithstanding the OECD's stated aim of enhancing interpretive certainty, the diversity of country observations and reservations recorded alongside the 2025 Commentary cautions strongly against a uniform reading of the new framework. Several jurisdictions diverge, in both directions, from the OECD's baseline approach to the home-office PE analysis:[39]

---

38 *Cf.* OECD, *The 2025 Update…*, *cit.*, para. 44.9.

39 *Cf.* OECD, *The 2025 Update…*, *cit*. Israel (para. 44.17: alternative metrics and broader PE exposure for founders and senior executives); India (para. 44.18: rejection of the 50%/commercial-reason construct; lower threshold for disposal); Malaysia (para. 44.19: bilateral flexibility on the percentage); Nigeria (para. 44.20: broader reading of commercial reason encompassing cost-reduction; PE risk on Example D facts).

- Israel has indicated that it may apply alternative metrics to the 50% working-time reference and would be more willing to treat the home offices of founders or senior executives as PEs.
- India has rejected the 50% and commercial reason construct altogether, maintaining that a home office may be considered at an enterprise's disposal on a lower evidentiary threshold.
- Malaysia has reserved the right to agree bilaterally on a different percentage.
- Nigeria has adopted a broader reading of "commercial reason", one that encompasses cost-reduction as a potentially sufficient basis, and has indicated that, on its approach, the fact pattern in Example D could give rise to a PE.

These divergences are not merely academic, they signal that the practical operation of the new framework will depend substantially on the bilateral treaty context and the administrative approach of the source State, and they underscore the continued importance of jurisdiction-specific analysis alongside the OECD-level guidance.

3. *Analysis of Scenarios*

To aid interpretation of when cross-border work from a home or other relevant place may create a fixed place of business PE, the 2025 update to the OECD Model Commentary sets out a series of Examples A–E. Each must be read with the caveat that Article 5 is applied case-by-case, on facts and circumstances.[40]

Example A

Example A addresses an employee of RCo, resident in State R, who ordinarily works in State R but, within a twelve-month period, rents and works from a place in State S for

[40] This Section is entirely based on the OECD, *The 2025 Update…*, *cit*, p. 17–19.

a consecutive three-month stint following a holiday in State S. On these facts, the place in State S is not fixed because RCo's business is carried on there for only three months out of twelve, the requisite permanence is therefore lacking.

Because the "fixed" element fails, there is no analytical need to proceed to the subsequent inquiries, namely, whether the place is a place of business of the enterprise and, if relevant, whether there is a commercial reason for carrying on the activity from State S.

Example A also clarifies two points. First, the personal motive for being in State S, whether a holiday or another private reason such as caring for a relative, does not alter the permanence conclusion. Secondly, the conclusion is unaffected by the fact that the place of work may differ from the lodging. In both cases, the analytical focus remains on the duration and regularity of business use.

Example B

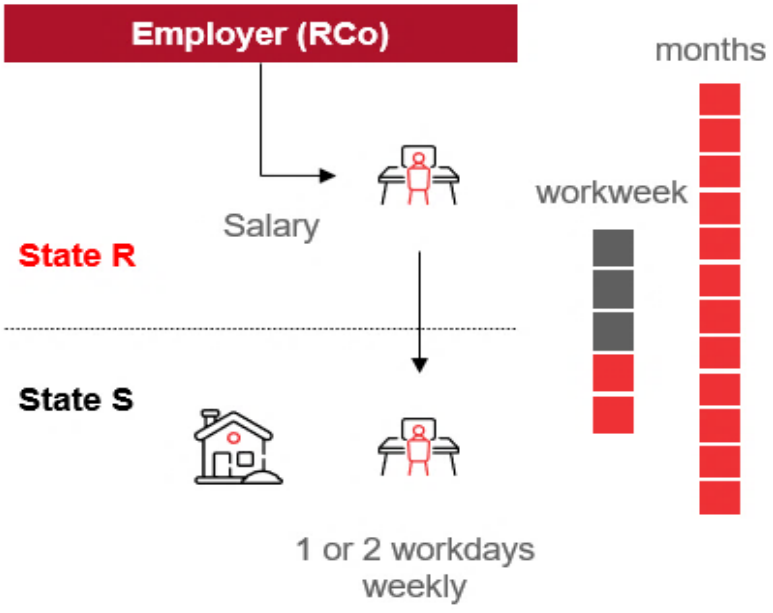
Example B addresses a situation in which an employee of RCo, resident in State R, works from her home in State S for one or two days per week over a twelve-month period, amounting to approximately 30% of total working time.

With only 30% of use, the home is not treated as RCo's place of business and therefore no fixed-place PE is constituted in State S. The sub-50% benchmark does not mechanically deny permanence as a conceptual matter, it operates as a practical indicator that the location is not to be regarded as the enterprise's place of business in the usual case.

The conclusion stated in this example is expressly without prejudice to other facts, if additional circumstances evidenced a jurisdiction-specific business rationale[41], the qualitative limb could, on different facts, point to a different result notwithstanding the temporal share.

---

41 Such as sustained, real-time service delivery to a State-S customer base or access to State-S expertise.



Example C

Example C presents a fact pattern in which an employee of RCo, resident in State R, works from his home in State S for approximately 80% of his working time over any rolling twelve-month period and regularly visits customers in State S to provide services, and it concludes that the home is "fixed," that the employee's presence is underpinned by a commercial reason, and that, absent contrary facts, a fixed-place PE arises for RCo in State S.

On the "fixed" element, the reasoning rests on the location's regular and continuous use throughout the period under review, which meets the traditional permanence limb of Article 5(1) as elaborated in the update. The explicit, quantitative 50% indicator functions as an operational proxy for permanence by distinguishing intermittent or incidental use from regular and substantial use and thereby facilitates a more predictable application of the fixed-place test to home-office situations.

Next step is to question whether the home is a "place of business" of the enterprise and, crucially, whether a commercial reason supports the employee's presence in State S. The facilitation of services to local customers is identified as a paradigmatic commercial reason; by contrast, generic cost-saving or talent-retention considerations, standing alone, do not suffice to convert a private residence into the enterprise's place of business.

The employee's regular provision of services to State-S customers from his home supplies the requisite nexus of business purpose to the location, so that, in the absence of countervailing facts (such as the activity being merely preparatory or auxiliary), the home is both a place of business of RCo and a fixed place through which RCo's business is carried on.

Example D

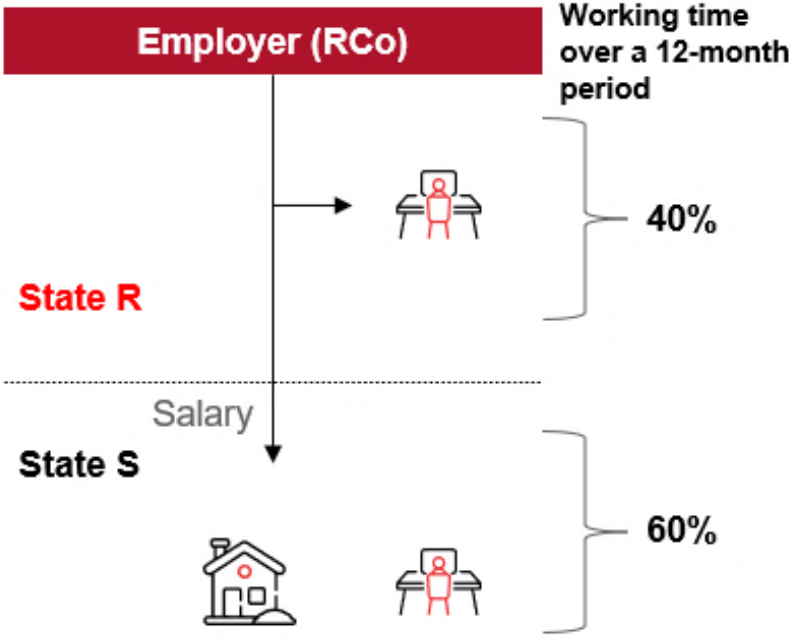
Example D shows an scenario in which an employee of RCo, resident in State R, works from his home in State S for approximately 60% of his total working time over a rolling twelve-month period, performs an exclusively client-facing role for customers located in State R, State S, and third jurisdictions, provides those services remotely without in-person meetings, and undertakes a quarterly one-day visit to a customer's premises in State S to review contractual performance.

On these facts, the initial conclusion is that the home in State S is "fixed" because it is used to carry on activities related to RCo's business throughout the period, which treats regular and substantial use exceeding the 50% temporal indicator as a strong proxy for permanence under Article 5(1).

Once permanence is established, the analysis turns to whether the home is a "place of business" of the enterprise, which under the 2025 framework depends on the presence of a commercial reason for carrying on the activity from State S. Applied to the facts of Example D, that element is not satisfied.

The client portfolio is multi-jurisdictional, services are delivered remotely without physical meetings, and the only State-S on-site interaction—a quarterly review—occurs on an intermittent and incidental basis; the mere presence of some clients in State S does not, by itself, constitute a commercial reason within the meaning of the revised Commentary.

In the absence of countervailing facts showing otherwise (for example, that the activities performed from the home are integral rather than preparatory or auxiliary), the home would not be a place of business of RCo and therefore would not give rise to a fixed-place PE in State S.



Example E

Example E posits an employee of RCo, resident in State R, who works almost exclusively from her home in State S and renders services virtually to customers in State R and in other jurisdictions located in different time zones; the employee's performance in State S enables real-time or near real-time

availability "around the clock" to those customers. On these facts, first, the home should be treated as "fixed," since it is used throughout the twelve-month period for activities related to RCo's business.

The analysis turns to whether the home is a "place of business" of the enterprise and whether there is a commercial reason for the activity to be carried on from State S. The facilitation of real-time customer interaction across time zones is recognised as a paradigmatic commercial reason.

In Example E the time-zone rationale is not incidental but forms the very logic of the employee's location choice and work pattern, since operating from State S is what enables the continuous service window to customers in other time zones. Absent contrary facts, the home therefore constitutes a place of business of RCo and gives rise to a fixed-place PE in State S.

The alignment of Example E with the revised framework becomes evident when read alongside Examples C and D. In Example C, a fixed-place PE arises because the employee spends about 80% of her working time in State S and regularly serves customers located there, which provides a clear commercial reason: facilitating services to the local market.

In Example D, by contrast, although the employee exceeds the temporal indicator, the customer base is dispersed, delivery is fully remote, and contact in State S is only intermittent, so the Commentary finds no commercial reason. Example E falls on the presence with purpose side of the line, the time-zone-driven, real-time service model requires being based in State S, so the qualitative limb is satisfied in addition to permanence.

4. *Practical Implications and Future Directions*

The immediate practical consequence of the 2025 Commentary update for multinational groups is the need to translate its interpretive framework into concrete internal governance measures.

This requires, at a minimum, reliable mechanisms to track actual cross-border working time on a rolling basis rather than relying on contractual arrangements that may not reflect operational reality, and, where the 50% threshold is exceeded, specific and contemporaneous documentation establishing the commercial reason for the employee's presence in the source jurisdiction.

This is precisely the trade-off the update is designed to achieve, reducing the incidence of low-substance permanent establishments arising incidentally while imposing a more demanding evidentiary standard where genuine economic presence exists.

A related but distinct question concerns the interaction between the fixed-place-of-business analysis and the dependent agent PE test under Article 5(5). The 2025 update does not modify that regime. Accordingly, individuals with authority to conclude contracts on behalf of the enterprise, or who habitually play the principal role leading to their conclusion, must be assessed under the dependent agent limb regardless of how much time they spend working from home.

That said, where the same facts already establish a fixed-place PE, there is no analytical need to duplicate the inquiry, and activities that are purely preparatory or auxiliary will not give rise to a PE under either limb.

Where a PE is found to exist under the new framework, the attribution of profits to that PE must follow the Authorised OECD Approach, as supplemented by the additional guidance developed under BEPS Action 7. In practice, this requires a careful delineation of the functions performed, assets used, and risks assumed at the source location, with particular attention to significant people functions.

It also requires the design of appropriate intragroup arrangements, whether licensing, recharge, or service agreements, that accurately reflect the economic contribution of the PE to the group's overall results.

From a policy standpoint, the update reflects a deliberate shift away from highly fact-specific, case-by-case determinations towards a framework built around verifiable operational indicators.

The objective is to reduce low-materiality disputes, focus enforcement resources on situations involving genuine economic substance, and give taxpayers a clearer basis for planning. The new framework does not eliminate fact-finding, but it structures the analysis in a way that makes outcomes more predictable for both sides.

Looking Ahead: AI Agents and the Server PE

It is worth considering whether the analytical logic of the 2025 Commentary has broader implications beyond human remote work. Could mechanisms that replicate human activity, in particular artificial intelligence agents and advanced automation, raise analogous PE questions?

Under the current text of the Model, the dependent agent PE analysis offers no traction here. Article 5(5) requires the conduct of a "person"[42] and the definition of "person" in Article 3 covers individuals, companies, and other bodies of persons[43]. AI systems and automated tools do not fall within that definition. The entity or individual operating the AI at source could, in principle, constitute a dependent agent PE if the

---

42 OECD, OECD, *Model Tax Convention on Income … cit. .* , (updated through 2025), Article 5(5): "where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise [...]"

43 OECD, *Model Tax Convention on Income … cit. .* , (updated through 2025), Article 3(1)(a): defining "person" to include "an individual, a company and any other body of persons".

Commentary on Article 3, para. 2: noting that the term "person" is used in a wide sense, but confirming that it is confined to legal and natural persons recognised as such under the applicable treaty and domestic law framework.

conditions of habituality and authority to conclude contracts are met, but the AI itself cannot.

The more productive analytical route runs through the fixed-place-of-business test, specifically its application to physical computing infrastructure commonly referred to as the server PE[44]. The OECD's established position, developed in the context of e-commerce, is that a website does not constitute a place of business because it is intangible, whereas a physical server that is at the disposal of the enterprise and through which the enterprise's business is carried on can qualify as a fixed place of business, provided the functions performed are not merely auxiliary.[45]

Standard third-party hosting arrangements, where the enterprise has no control over the underlying hardware, do not generally reach that threshold. This framework provides the natural starting point for analysing AI-driven operations conducted from localised infrastructure.

The 2025 Commentary, although focused on individuals and residential locations, offers a useful conceptual bridge. Its emphasis on the commercial reason for the choice of location can equally be applied to decisions about where to deploy computing infrastructure.

If an enterprise locates and operates intensive processing capacity in a given jurisdiction for objectively verifiable business reasons, such as access to competitive energy costs, proximity to latency-sensitive customers, or a regulatory environment that enables real-time service delivery, and the principal service is delivered from that infrastructure on a non-auxiliary basis, the classic server PE analysis applies in full.

---

44 OECD, *Model Tax Convention on Income … cit.*, (updated through 2025), Commentary on Article 5, paras. 122-131.

45 OECD, *Clarification on the Application of the Permanent Establishment Definition in E-Commerce: Changes to the Commentary on the OECD Model Tax Convention on Income and Capital*, OECD Publishing, Paris, 2000, available at: The 2025 Update to the OECD Model Tax Convention (EN).

The 2025 guidance does not treat computing infrastructure as equivalent to a worker, but it reinforces the principle that the deliberate localisation of operational capacity can be decisive for nexus purposes, regardless of whether execution is human or machine based.

Practical Next Steps

For management teams, the implications of the 2025 update translate into three sequential priorities:

- First, implement a tracking system for cross-border working time that operates on rolling twelve-month periods and is sufficiently granular to segment activity by jurisdiction and function.
- Second, establish a documentation standard for commercial reason that can withstand scrutiny whenever the fifty per cent indicator is exceeded, grounded in objective operational evidence rather than contractual recitals.
- Third, conduct an inventory of the infrastructure used to execute AI-driven or automated workloads, distinguishing assets owned or controlled by the enterprise from third-party services where no disposal exists, and prepare the corresponding attribution and transfer pricing documentation where appropriate.

As the Commentary itself makes clear, the analysis will always turn on the specific facts of each period, the enterprise's effective disposal of the relevant place, and the real economic rationale for the presence.

III. REVISION OF COMMENTARIES ON ARTICLES 5, 9 AND 25, AND AMENDMENTS ON ARTICLE 25

1. *Article 5 on Extractives: Optional Provision*[46]

The interpretive OECD Model is extensively revised. The natural-resources text is entirely new (not present in 2017 or 2014). These changes significantly refine the line between what counts as an employer's fixed place of business under Article 5 in resource projects, providing predictability that was lacking in earlier Models. The Commentary emphasises that this aligns with many existing bilateral treaty practices (often for oil/gas projects) and aims for consistency and certainty.

The 2025 Model responds to a long-standing source-residence tension in resource projects by proposing a standardised, optional clause that lowers the PE threshold for extractive activities and thereby preserves source taxing rights in cases where operations are meaningful but mobile and short in duration.

The policy rationale is to avoid under-taxation where classic fixed place tests are ill-suited to offshore campaigns or onshore scouting phases that move rapidly across blocks and concessions; the template is designed to yield more consistent bilateral drafting and interpretation without prescribing a uniform period applicable to all cases.

The optional text is presented in two scope variants:

- The first variant is confined to activities carried on offshore in connection with the exploration or exploitation of the seabed, its subsoil and their natural resources, and it expressly excludes certain vessel operations such as personnel transport, towing and anchor handling.

46 *Cf.* OECD, *The 2025 Update…*, *cit.*, pp. 20–29.

- The second variant extends the scope to onshore finite natural resources and specialised connected activities in addition to offshore work, again with the same explicit exclusions for support vessels.

The key threshold in either case is temporal: a deemed PE arises where a non-resident carries on relevant extractives activities in the source State beyond a bilaterally agreed period, which the Commentary deliberately leaves to negotiators to calibrate.

The OECD Model also anticipates collateral issues that frequently accompany extractive projects. It sketches a capital-gains clause confirming source taxing rights on disposals of extractives-related assets and indicates how treaty partners might extend Article 13(4)-style indirect transfer rules to catch upstream divestments in entity form.

For negotiators, the practical choices start with scope. A residence-state economy with service-oriented extractives groups may prefer the offshore-only variant to contain exposure, whereas a source-state economy with material onshore resources will often prefer the wider onshore-plus-offshore drafting.

It is equally important to define aggregation mechanics[47], and to couple the deeming rule with anti-fragmentation language so that the lowered threshold can be administered coherently.

Where capital-gains extensions are contemplated, negotiators should also align the new extractives paragraph with Article 13(4) to avoid overlaps and gaps in indirect transfer cases.

On the taxpayer side, companies should maintain defensible, verifiable day-count evidence by reconciling time sheets, vessel logs and port calls with contractual scopes, and

[47] Such as how days attributable to associated enterprises and subcontractors are counted.

they should pre-empt disputes by explaining which activities are within or outside the "relevant activities" definition before a temporal threshold is reached.

2. *Article 9 on Associated Enterprises: Transfer Pricing Adjustments*[48]

The text of Article 9 itself remains unchanged, in both 2017 and 2025. However, the Commentary to Article 9, has been substantially revised and updated

The OECD Model clarifies how Article 9 interacts with the OECD Transfer Pricing Guidelines' Chapter X on financial transactions and with domestic interest limitation rules developed under BEPS Action 4. The Model confirms that Article 9 is about allocating profits on an arm's-length basis and that it does not itself adjudicate whether a given expense is deductible once the arm's-length outcome has been determined.

This point is relevant for intercompany loans, guarantees and cash-pooling arrangements. This point is particularly relevant for intercompany loans, guarantees, and cash-pooling arrangements. Tax administrations must first delineate and price the transaction under the Guidelines before applying domestic limitations to determine deductibility. The Model also flags related adjustments in the Commentaries to Articles 7 and 24 to reduce friction over whether an Action-4-style rule impermissibly overrides an arm's-length outcome or discriminates against cross-border groups.

First, the opening paragraphs now expressly reference the OECD Transfer Pricing Guidelines as reflecting "internationally agreed principles" on adjusting non-arm's-length transactions. This had been implicit before; now the Commentary explicitly directs readers to the Guidelines for methodologies.

The Model now tells treaty partners that if domestic law disallows an interest or other expense (e.g. under BEPS interest limitation), Article 9 does not automatically entitle the taxpayer

48 *Cf.* OECD, *The 2025 Update…*, *cit.*, pp. 38–42.

to relief by treaty. This codifies the principle that Article 9 is not an independent deduction-right; such rules remain governed by local law.[49]

The 2017 Model Commentary did not directly address the interaction between Article 9 and domestic interest limitation rules or disallowance provisions. Its focus was confined to transfer pricing methodologies and the corresponding adjustment mechanism under Article 9(2), without engaging with the question of how generally applicable domestic deductibility restrictions relate to an arm's length outcome already determined under the treaty.

3. *Article 25 on Mutual Agreement Procedure (MAP)*[50]

Article 25's text is amended in 2025 by the addition of a new paragraph 6. The new Article 25(6) provides rules for when a trade in services dispute under GATS (General Agreement on Trade in Services) may also fall within a tax treaty's MAP. Specifically, paragraph 6(a) confirms that a tax "measure" falls within the Convention's scope only if Article 24 applies, and paragraph 6(b) provides that any dispute over scope shall be resolved via Article 25's MAP or any bilateral procedure.

This text brings certainty to circumstances where tax measures implicate GATS consultations, confirming that tax treaties, not GATS per se, govern double taxation cases in such contexts. No prior version of the Model contained this; it responds to WTO obligations by making MAP explicitly the fallback dispute-resolution path for taxing measures under GATS consultation.

The Commentary on Article 25 is also updated. Relevant changes include new guidance cross-referencing BEPS Amount B (fixed-base profit allocation) and transfer pricing rules.

---

49 The Commentary also notes that disputes over procedures or burdens of proof are for domestic law or Article 24, not Article 9.

50 *Cf.* OECD, *The 2025 Update…*, *cit.*, pp. 51–59.

A new paragraph 1 instructs that when a taxpayer seeks MAP (or arbitration) in a case involving associated enterprises (Article 9 issues), both competent authorities "must have regard to paragraphs 6, 72 and 79 of the Annex to Chapter IV of the Transfer Pricing Guidelines (February 2024)".

In short, MAP disputes touching on fixed-base allocation should be resolved using the OECD Annex benchmarks as guidance. Other amendments (paragraphs 14, 38, 63) clarify taxpayer rights in triggering MAP and time limits for arbitration, but the standout is the tie-in to Amount B's "tax certainty" language, which is entirely new.

The 2017 Model contained no Article 25(6), this is entirely new text. Its insertion parallels a 1995 Commentary example ("either under paragraph 3 MAP or any other agreed procedure") but now formalizes it in the Article. The Commentary changes signpost the new BEPS outcomes: prior Article 25 Commentary (2017) had nothing on Amount B or reference to the latest TP Annex. The 2025 Commentary's paragraph 12.1 is thus an interpretive shift, integrating modern transfer-pricing framework into MAP instructions.

4. Article 26 on Exchange of Information[51]

The OECD Model confirms two points that have been important but not always uniformly expressed:

- First, information received through exchange may be used for tax matters concerning persons other than the person with respect to whom the information was initially obtained, which is particularly relevant for cases involving related parties or intermediaries uncovered during an investigation.

51 *Cf.* OECD, *The 2025 Update…*, *cit.*, pp. 58–59.

- Second, the Model reflects agreed guidance on taxpayer access and on disclosure of reflective, non-taxpayer-specific-information generated from exchanged data, thereby balancing transparency with the confidentiality obligation in Article 26(2).

Together these clarifications give administrations clearer guardrails for secondary use of exchanged material and for handling access requests without jeopardizing the integrity of the exchange relationship.

February 2026, Luxembourg

BIBLIOGRAPHY

Chambre des Salariés Luxembourg (CSL), "26% of Luxembourg Residents, 4% of Cross-Border Workers Report Frequent Teleworking", The Chronicle, Luxembourg, 2025, available at: https://chronicle.lu/category/surveys-reports/55445-26-of-luxembourg-residents-4-of-cross-border-workers-report-frequent-teleworking.

Chambre des Salariés Luxembourg (CSL), "Teleworking in Luxembourg: Trouble Ahead?", Paperjam, Luxembourg, 2024, available at: https://en.paperjam.lu/article/teleworking-in-luxembourg-trou.

Eurofound, "Chapter 5: What Does the Future of Telework Look Like? Telework in transition", Eurofound, Dublin, 2025, available at: https://eurofound.shorthandstories.com/living-and-working-in-europe-2024/introduction/telework-in-transition/5-what-does-the-future-of-telework-look-like/.

Eurostat, "Household Consumption: Price Levels in 2024, Eurostat News", June 19, 2025, available at: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250619-1.

IEA, *Critical Minerals Market Review 2025*, IEA, Paris, 2025.

IEA, *Oil Market Report*, IEA, Paris, 2025.

International Fiscal Monitor, "Rising Global Debt Requires Countries to Put their Fiscal House in Order", IMF Blog, 23 April 2025, available at: https://www.imf.org/en/blogs/articles/2025/04/23/rising-global-debt-requires-countries-to-put-their-fiscal-house-in-order.

International Monetary Fund, "Fiscal Policy under Uncertainty", April 2025.

Invest in Estonia, "Estonian e-Residency Attracts Record Interest and Revenue in 2024", Estonian Business and Innovation Agency, 2024, available at: https://investinestonia.com/estonian-e-residency-attracts-record-interest-and-revenue-in-2024.

OECD, *Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce?*, OECD Publishing, Paris, 2004.

OECD, *Clarification on the Application of the Permanent Establishment Definition in E-Commerce: Changes to the Commentary on the OECD Model Tax Convention on Income and Capital*, OECD Publishing, Paris, 2000.

OECD, *Country-by-Country Reporting – Compilation of 2025 Peer Review Reports: Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, 2025.

OECD, *Government at a Glance 2025*, OECD Publishing, Paris, 225.

OECD, *Model Tax Convention on Income and on Capital*, OECD Publishing, Paris, 2017.

OECD, *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, 2015.

OECD, *Public Consultation Document: Tax Challenges Arising from the Digitalisation of the Economy - Global Mobility*, OECD Publishing, Paris, 2025.

OECD, *Teleworking, Workplace Policies and Trust*, OECD Publishing, Paris, 2024.

OECD, *The 2025 Update to the OECD Model Tax Convention*, OECD Publishing, Paris, 2025.

OECD/Eurostat, *Measuring Telework in the COVID-19 Pandemic*, No. 314, OECD Publishing, Paris, 2021.

OECD Statistics Blog, "What is government deficit and why does it matter?", July 29, 2025, available at: https://oecd statistics.blog/2025/07/29/what-is-government-deficit-and-why-does-it-matter/.

Roberts & Holland LLP, "When Does E-Commerce Result in a Permanent Establishment? The OECD's Initial Response", available at: https://www.robertsandholland.com/news-and-insights/when-does-e-commerce-result-in-a-permanent-establishment-the-oecds-initial-response/.

Savills World Research, "Executive Nomads 2025: Quality of Life is a Priority in Location Choices", Savills Impacts, October 2025, available at: https://impacts.savills.com/social-change/executive-nomads-2025-quality-of-life-is-a-priority-in-location-choices.html.

STATEC Luxembourg, "In 2024, Population Growth Slowed due to Low Fertility and a Decline in Immigration", Press Release, Luxembourg, 2025, available at: https://statistiques.public.lu/en/actualites/2025/stn16-population-2025. html.

STATEC Luxembourg, "Regards 01/25 - Panorama of the Luxembourg Labour Market on 1 May, STATEC, Luxembourg", Press Release, Luxembourg, 2025, available at: https://statistiques.public.lu/en/publications/series/regards/2025/regards-01-25.html.

Tiberghien, "The MLI Ratification Process Formally Completed - What Happens Next for Luxembourg?", April 10, 2019, available at: https://www.tiberghien.com/en/1531/the-mli-ratification-process-formally-completed-what-happens-next-for-luxembourg.

UAE Government, "Residence Visa for Working Outside the UAE", available at: https://u.ae/en/information-and-services/visa-and-emirates-id/residence-visas/residence-visa-for-working-outside-the-uae.

UK Government, "Transfer Pricing and Diverted Profits Tax Statistics: 2023 to 2024", available at: Transfer Pricing and Diverted Profits Tax statistics: 2023 to 2024 - GOV.UK.

VOGEL, Klaus, *Klaus Vogel on Double Taxation Conventions*, Wolters Kluwer, 4th edition, Alphen aan den Rijn, 2015.