

Permanent establishment and remote work: OECD's 2025 update and your organization

March 06, 2026

Since COVID-19, remote and hybrid work have permanently reshaped where people work, leading to real tax consequences for employers. On Nov. 19, 2025, the Organisation for Economic Co-operation and Development (OECD) released updates to the [Model Tax Convention](#) and its Commentary, introducing a clearer framework for assessing when a remote employee's home office may constitute a "permanent establishment" (PE) of their employer in another jurisdiction. Canadian organizations with cross-border workforces may wish to review their existing structures and policies in light of these updates.

We note that the updates relating to the establishment of a PE are not changes to the treaty provisions themselves but rather to the Commentary.

What you need to know

The new two-part test

The updated Commentary to Article 5 introduces a structured analytical framework that focuses on two key factors, both of which are highly relevant in determining whether a fixed place of business PE exists.

- First, the employee must work from a home office — or other non-traditional location — in a foreign country for at least 50 per cent of their total working time over any rolling 12-month period.
- Second, there must be a genuine commercial reason for that person being physically present in that country, meaning their presence actually advances the employer's business there. For example: active client engagement, hands-on supplier management, or a role that requires meaningful local market participation.

Where either factor is absent, a fixed place of business PE will generally not arise, although the analysis remains fact-specific.

What counts as a "commercial reason"?

The updated Commentary is explicit that employee preference, talent retention goals, and office cost savings do not qualify as commercial reasons. Nor do occasional visits to clients — the OECD commentary specifically notes that quarterly meetings, without more, would generally fall short of the standard. What does qualify is presence that materially facilitates the employer's business in that jurisdiction: regular local client interaction, supplier oversight, time zone coverage that meaningfully improves service delivery, or collaboration with local institutions.

However, even where no commercial reason exists, the PE analysis is not automatically closed. All relevant facts and circumstances must still be weighed, and other indicators could nonetheless support a PE finding.

Dependent agent PE

It should also be noted that the 2025 update does not alter the dependent agent PE analysis, which remains a separate and, in many cases, more significant source of PE risk where employees are habitually involved in contract negotiation or conclusion on behalf of their employer in other jurisdictions.

Takeaway: What this means in practice

The updated Commentary can impact certain arrangements for cross-border employers.

Historically, where, for example, a U.S. employer had Canadian employees working from home in Canada performing a sales function, the prevailing advice was that those employees would not, in and of themselves, create a Canadian permanent establishment, provided the employer did not have the home workspace at its disposal.

Following the Nov. 19, 2025 update to the OECD Commentary, this conclusion is no longer as robust. Where a Canadian-based employee performs core sales activities from home on a regular and sustained basis, and where there is a commercial reason for those activities to be carried on in Canada, the risk that the home workspace could be viewed as constituting a fixed place of business permanent establishment has increased, even if the formal indicia of employer control over the workspace have not materially changed.

For other organizations, the new framework confirms that cross-border employees working remotely for personal reasons without any real local business purposes should not inadvertently create greater PE exposure than under previous guidance. Companies that maintain small foreign subsidiaries for just one or two employees may also find it worth revisiting whether those entities are still necessary.

While OECD Commentary is not binding on Canadian courts, it is a well-established interpretive tool in applying Canada's tax treaties. Further, if the Canada Revenue Agency (CRA) accepts and assesses taxpayers on the principles in the updated Commentary, deviation from those rules could result in costly dispute procedures before a court will evaluate the applicability of the updated Commentary in Canada. As of the date of publication, the CRA has not issued a formal administrative statement expressly confirming whether it will adopt or apply the revisions to the OECD Commentary on PEs. However, Canada has not filed a reservation or observation objecting to the

updates to the commentary on PEs. Historically, Canadian courts and the CRA have treated OECD Commentary as a persuasive, though not determinative, aid to treaty interpretation.

Organizations should use this update as an opportunity to audit their cross-border remote work arrangements, build rolling 12-month work-location tracking into their HR and tax processes, and document the business rationale for any arrangements that approach or exceed the 50 per cent threshold.

BLG can assist

[BLG's Tax Group](#) and [Labour and Employment Group](#) regularly advise Canadian and multinational organizations on cross-border tax structuring, permanent establishment risk, and global mobility matters. If you have questions about how these changes apply to your workforce, please reach out to a member of one of those groups.

By

[Siwei Chen](#)

Expertise

[Tax, Labour & Employment](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.