TAX ALERT

2025 Updates to the OECD Model Tax Convention

TAXATION COMMITTEE

INSTITUTE OF CHARTERED ACCOUNTANTS OF THE MALDIVES

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2025 Updates to the OECD Model Tax Convention

On 18 November 2025, the OECD Council adopted a series of important updates to the OECD Model Tax Convention and its Commentaries. While the treaty text itself remains largely unchanged, the revised Commentaries introduce substantial new guidance, particularly in relation to permanent establishment ("PE") issues arising from remote working, extractive industry activities, transfer pricing in relation to financial transactions, and the interaction between tax treaties and international trade agreements.

These updates introduce substantial interpretative clarity, provide greater tax certainty for tax authorities, and better reflect post-pandemic international working arrangements and evolving global business models. Below is a summary of the key changes.

Key Changes

1. PE - Home Office / Remote Working

During the COVID-19 pandemic, the OECD issued temporary guidance to address remote working arrangements. As remote and cross border working have since become a norm, the existing OECD Commentary has become outdated and no longer fully reflects modern mobility patterns. To address this gap, a new section titled *"cross-border working from a home or other relevant place"* has been introduced into the Commentary on Article 5(1) of the Model Tax Convention.

What's New

A new section added to the Commentary on Article 5(1) of the Model Tax Convention.

Importantly, the text of Article 5 itself remains unchanged.

As this is a clarification to the Commentary rather than an amendment to the treaty text, the updated guidance applies to existing bilateral tax treaties.

Key Clarifications

a) Fixed Place of Business Test

- Under the updated guidance, the traditional fixed place of business and permanency test continues to apply even when work is performed from a home office.
- As a general indicator, where the use of a home office lasts less than six months, a PE will not normally be considered to exist, absent other unusual circumstances.
- Activities that are merely preparatory or auxiliary in nature also do not create a PE, and the dependent agent PE test continues to operate as a separate and distinct assessment.

b) Frequency / Time-threshold

- If an individual works from a location less than 50% of their working time over a 12-month period, the home office is not considered a fixed place of business → *No further PE assessment required.*

c) Commercial Reason Test

- Even where the 50% time-threshold is exceeded, the home office does not automatically constitute a PE. A key determinant is whether the enterprise has a commercial reason for the individual to perform work in that State.
- Examples of potential commercial reasons include:
  - Regular, direct interaction with local customers or suppliers
  - Need for near real-time interaction across time zones
  - Operational efficiency or continuity requirements
- No commercial reason exists if:
  - Engagement with clients/suppliers is only intermittent or incidental
  - Home working arrangement is employee driven (personal preference, second home, holiday rental)
  - Arrangement exists solely to retain the individual or to reduce office costs, without a location specific business rationale

Example

A software engineer employed by a Singapore company chooses to spend more than 8 months per year in the Maldives working remotely from a family home. She performs coding and internal development tasks for her team based in Singapore. The company does not have suppliers or clientele in the Maldives nor is there a business need for her presence in the Maldives.

Even if she spends more than 50% of her working time in the Maldives, the company does not have a PE in the Maldives because:

- The company has no commercial reason for her presence in Maldives;
- Her work is not targeted at Maldivian customers or markets; and
- The use of the home is an employee driven convenience, not part of the enterprise's

2. PE - Exploration and Exploitation of Finite Natural Resources

The 2025 update introduces a freestanding, optional provision addressing activities in connection with the exploration and exploitation of natural resources such as oil, gas and minerals.

This provision is intended to preserve source-country taxing rights in cases where non-residents conduct extractive activities for short periods or without a fixed place of business - a concern noted as especially relevant for resource-rich developing countries.

What's New

Relevant activities related to exploration and exploitation (including specified services) carried out by a non-resident enterprise in a State may give rise to a deemed PE once the enterprise exceeds a bilaterally agreed time threshold.

This threshold is lower and more tailored than the general PE standard in Article 5.

Key Features

The provision is flexible and can be drafted to cover:

Offshore activities related to the exploration and exploitation of the seabed, subsoil, and their natural resources, subject to limited exceptions for certain support vessel operations; and/or

Onshore and offshore activities connected to the exploration and exploitation of the seabed, subsoil, and their natural resources, as well as the exploration and extraction of onshore finite natural resources and other specialised related activities - again with specific exceptions for certain support vessel operations.

Where such a deemed PE is triggered:

- Article 7 (Business Profits) rules apply for profit attribution; and

The update also envisages potential expansion of taxing rights in Article13(4) over certain indirect transfers of extractive related assets and anti-fragmentation / anti-contract-splitting concerns. As well as the possibility of employment income taxing rights related to extracting activities.

For countries rich in natural resources, especially developing and resource dependent economies, this optional provision offers a standardised template to secure source taxation over extractive activities.

3. Transfer Pricing

The OECD has updated the Commentary on Article 9 (Associated Enterprises) to align it with Chapter 10 of the OECD Transfer Pricing Guidelines on financial transactions. These revisions address issues surfaced in the OECD's work on financial transactions and the interaction with domestic interest-limitation rules (e.g. BEPS Action 4).

What's New

Better alignment on the characterisation and pricing of intragroup financial transactions.

Confirmation that Article 9 does not determine deductibility of expenses once arm's-length pricing has been established.

Key Clarifications

a) Alignment with Chapter 10 - Financial Transactions

- Clarification is provided of how intragroup loans, and other financial transactions should be characterised and priced for treaty purposes and the update aligns Article 9 Commentary with the approach in Chapter 10 of the TPG.
- The arm's length principle remains unchanged, but the Commentary now provides a more coherent framework for assessing financial dealings, risk allocation and funding structures.

b) Separation of profit allocation and deductibility

- Other related amendments are made to:
  - Article 7 Commentary (Business Profits) to align business profits allocation with the revised Article 9 approach; and
  - Article 24 Commentary (Non-discrimination), to ensure that interest limitation rules do not, inappropriately, conflict with treaty non-discrimination standards.

c) Other amendments

- A major conceptual clarification provided is that Article 9 concerns the allocation of profits between associated enterprises on an arm's length basis.
- The question of whether expenses are deductible once the arm's length price is determined is left to domestic law (i.e., interest limitation rules imposed as per BEPS Action 4).

These changes enhance certainty for multinational groups and ensure consistency between treaty interpretation and transfer pricing rules.

4. Trade Agreements & Amount B

The update introduces a new paragraph 6 to Article 25 and related Commentary to address the interaction between tax treaties and the General Agreement on Trade in Services ("GATS").

a) New Paragraph

The new provision confirms the role of competent authorities of the Contracting States in determining whether a particular measure falls within the scope of a tax treaty for the purposes of the GATS dispute resolution mechanism and clarifies interpretative practice where tax issues and trade obligations overlap. This reduces uncertainty around whether a measure should be addressed under the tax treaty or under GATS.

b) Commentary changes related to Amount B

The 2025 Update also makes targeted changes to the Commentary on Article 25 linking to the OECD's work on Pillar One Amount B. These changes cross reference to relevant language in the report on Amount B, aiming to ensure that optionality is preserved for jurisdictions that do not adopt Amount B, while still providing a coherent framework for dispute resolution and mutual agreement procedures.

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5. Other Changes - Exchange of Information

In addition to the major revisions discussed above, the Commentary on Article 26 has been updated to clarify the scope and permissible use of information exchanged between treaty partners. It expressly confirms that information obtained under exchange of information provisions may be used for tax matters relating to people other than those to whom the information originally relates, provided such use is permitted under the treaty and domestic law. New guidance is also provided on disclosure of "reflective non-taxpayer specific information".

These clarifications aim to strengthen administrative cooperation, promote transparency, and ensure that confidentiality and proper use restrictions remain intact.

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