Forum on Implementation of Measures to Counter Base Erosion and Profit Shifting (BEPS)

2025 Update to the OECD Model Tax Convention: global mobility and “place of business”

IOTA
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Global mobility and “place of business”

- Changes to the Commentary on Article 5

  - evolution of existing principles and instruments to reflect modern working arrangements
  - definition of “home office”: circumstances in which an individual’s home constitutes a “place of business”
  - case-by-case analysis and factual approach
    - *“whether a permanent establishment exists in a State must be determined on the basis of the facts and circumstances applicable during a given period”* (par. 44.3)

Global mobility and "place of business"

- Cross-border working from a home or other relevant place

  - Some practical indicators to be used to verify whether an individual's home or another relevant place could constitute a "home office-PE", given a certain degree of permanence

    - Step I – a certain degree of permanence
    - Step II – the time-based threshold
    - Step III – the existence of a "commercial reason"

Global mobility and “place of business”

- **Time-based threshold (parr. 44.7 to 44.10)**
  - **the availability of a place for a continuous period of time within a given timeframe**
    - ***“If an individual works from a home or other relevant place for at least 50 per cent of their total working time over the course of any twelve-month period commencing or ending in the fiscal year concerned, then whether the enterprise has a place of business at such a place will be determined by the facts and circumstances”* (par. 44.10)**

Global mobility and "place of business"

- Time-based threshold (parr. 44.7 to 44.10)

  - Mixed use: an individual spends time at a home or other relevant place both in a private and business-related context
    - focus on the actual conduct of the individual to calculate the working time (par. 44.9)
    - formal contractual arrangements are of practical assistance should they reflect the actual conduct of the individual

  - Use of a place on a recurrent basis over several years: each period of time during which the place is used needs to be considered in combination with the number of times during which that place is used over a number of years

Global mobility and “place of business”

- Existence of a commercial reason (parr. 44.11 to 44.19)

  - The presence of the individual in a State actually facilitates the conduct of business by the non-resident enterprise
    - “*A commercial reason will be present where the individual directly engages with customers, suppliers, associated enterprises or other persons on behalf of the enterprise and that engagement is facilitated by the individual being located in that State*” (par. 44.12)

  - Not necessarily related to the “productive character” of the business activity.

  - Focus on how the activity undertaken by the individual relate to the business of the non-resident enterprise
    - “*A commercial reason requires a link between the individual’s presence at a home or other relevant place in that State and the carrying on of the business of the enterprise*” (par. 44.15)

Global mobility and “place of business”

- Existence of a commercial reason (examples)

No commercial reason	Indicators of a commercial reason
individual choice for personal reasons	regular meeting with customers, suppliers…
cost-saving policy	new business and stakeholders opportunity
intermittent or incidental presence	different time-zones (when relevant)
short occasional visits	easy access to business-relevant expertise
	services requiring the physical presence of employees of the enterprise

Global mobility and "place of business"

- The individual acting as the "only person" or the "primary person" (par. 44.20)

  - *"A non-resident consultant who is present for an extended period in a given State where she carries on most of the business activities of her own consulting enterprise from an office set up in her home in that State*"

  - Considerations to be made
    - the time-based threshold is exceeded: more than 50% of her working time is performed by her home in the other State
    - a commercial reason exists: her activities are directly linked to the business of the enterprise ("*she carries on most of the business activities of her own consulting enterprise*")
    - the home office constitutes a place of business of the enterprise

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