BusinessatOECD | Business and Industry Advisory Committee to the OECD

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***Business at OECD* (BIAC) Comments to the OECD Public Consultation Document "Global Mobility of Individuals (26 November – 22 December 2025)**

Dear OECD Secretariat,

Business at OECD (BIAC) appreciates the opportunity to provide comments on the **OECD Public Consultation Document "Global Mobility of Individuals** (the "Document"). We strongly support the work performed by the Inclusive Framework to gather data on factual trends and challenges in view of the increasing mobility of work and new ways of working which businesses have observed across geographies, industries and employment levels. We further appreciate the opportunity to provide evidence and recommendations across personal income tax, corporate income tax (including permanent establishment and residence), transfer pricing, and administration and compliance.

We begin by expressing our sincere appreciation for the OECD's recent work in updating the Commentary to Article 5 of the Model Tax Convention regarding the Permanent Establishment (PE) implications of a home office. This update represents a vital first step in providing the clarity businesses need to navigate the complexities of modern, remote-based working environments.

While the guidance on home office PE is a welcome framework, the broader global mobility landscape remains fraught with significant uncertainty. As digital and global ways of working become the standard, the trend of cross-border mobility will only continue to accelerate. Global mobility is a critical driver of economic growth, investment, and opportunity for both employees and businesses. Addressing the remaining tax and administrative frictions is essential to ensuring that the tax system supports, rather than restrains, this evolution.

Currently, businesses contend with several pervasive challenges that frequently lead to restrictions or denial of remote-work requests. Businesses experience disproportionate compliance costs for individual income tax, social security, and payroll withholding, often triggered by only a few days of presence. There is further significant uncertainty regarding how individual states interpret remote-work rules, requiring businesses to conduct overwhelming separate country legal reviews. Finally, there is a lack of coordination among social security, payroll and income tax withholding rules

We believe it is critical that the Inclusive Framework now take up a broader mobility agenda to simplify these rules. Specifically, we would appreciate further review of other aspects of

PE impacted by remote working (i.e., place of effective management, dependent agent). Businesses would also highly appreciate coordinating rules across all taxes, including personal income tax liabilities, employer withholding, social security and the associated reporting obligations.

By harmonizing these interpretations and adopting overarching standards across all member states, the OECD can provide the certainty necessary for businesses to operate effectively in a decentralized world. We look forward to continuing our collaboration with the Inclusive Framework to develop practical, growth-conducive solutions for the modern workforce.

We provide below our responses to the specific questions raised in the Document.

1. Data and trends: What research or evidence do you have on the prevalence and trends of global mobility of individuals? For example:

    a. Trends related to the uptake of cross-border remote working, frontier working or digital nomadism, including which of these are the most prevalent?

Global mobility patterns have evolved significantly in recent years, driven by globalization, digitalization, and the shift toward flexible work models. There is a strong demand and high expectations for HR and tax departments to enable a broader range of scenarios. There is further a diversity in cross-border working that fall within the mobility of services beyond moving from Country A to Country B.

Many multinationals operate on a spectrum of mobility models enabling teams to deploy talent across borders through a variety of mechanisms including traditional long-term assignments, short-term assignments, commuter assignments, virtual assignments, frequent business travelers, hybrid arrangements, ad-hoc cross-border work, among others.

Some notable trends include:

- **Cross-Border Remote Working**: This is currently the most prevalent form of global mobility. It surged during the pandemic and remains significant due to hybrid work arrangements and employees seeking flexibility for personal reasons. This flexibility is often an important factor for accepting or retaining employment. There is a significant number of the global population of staff either making personal remote work requests or have complex cross-border working arrangements.

- **Frontier Working and Commuting:** There is a growing trend of employees on international assignments commuting regularly between their country of residence and their assigned country. This is often for personal reasons such as family commitments and is particularly common within regions like western Europe, where frequent travel is feasible. Typical arrangements include working part of the week remotely (e.g., Fridays from home) and the rest in the assigned country for 1–3 years.

- **Digital Nomadism:** Digital nomadism, or multi-country moves without a stable employment location, remains relatively uncommon for most multinationals.

- **Regional/Global roles and Cross border management:** Increasingly, employees hold roles with responsibilities across multiple jurisdictions, often with personal ties to two or more countries and no clear affiliation to a single office location. Companies having to consider flexible staffing models with managers and supervisors located in jurisdictions different from their direct reports/team members. This adds complexity to determining tax residence and compliance obligations.

- **Changing demographics:** Members have observed that employees are working longer and accepting international assignments later in their careers leading to unique cross-border tax considerations. They also observed that globally mobile employee population exhibits diverse family patterns and living situations. Family members may reside and work in different countries, or employees might frequently commute and maintain homes in multiple jurisdictions. Their overall tax profile often spans several countries over a longer career, making compliance more intricate.

- **International talent sharing and local-to-local hiring**: Enterprises fill roles directly in the host jurisdiction (local contracts, host-based compensation) rather than through classic expatriate packages. This puts the onus on employees to navigate cross-border tax implications (such as dual payrolls or reporting obligations). Sometimes, a practical solution is only required for a temporary period of time (i.e., waiting for the work visa).

These mobility patterns create significant regulatory and operational challenges, creating extra work for internal functional teams across Finance, Legal, Tax and HR. This trend has also driven business to make significant investments to meet tax and social security obligations across multiple jurisdictions. Organizations have introduced stricter policies and guardrails to mitigate tax risks, which often limit flexibility and growth in certain regions.

- Evidence of the economic impact of these trends for job creation, wages, productivity and economic growth, or examples where current uncertainties in the tax rules have constrained commercial decisions?

Global mobility trends have delivered clear business benefits, including access to global talent, faster staffing of roles, and improved attraction and retention of employees. These arrangements support productivity and economic growth by enabling companies to hire critical roles that would otherwise be difficult to fill locally. Moreover, offering remote or commuter arrangements is often decisive for attracting and keeping top talent.

The Union of Luxembourg Enterprises conducted a survey[1] in 2022 dedicated to teleworking where more than 1,000 enterprises participated. One of the findings is that 40% of the participated enterprises indicated losing a potential candidate because of the lack of teleworking proposed. This reflects the importance and the impact of the teleworking on the employees' (or potential candidate) well-being and opportunities.

This economic impact of remote working is negatively impacted by tax and social security complexities and administrative compliance burdens, which often **constrain commercial decisions**:

- **Disproportionate cost and compliance for minimal presence:** even a few days of work can trigger withholding registration, payroll actions and/or employee filing requirements.
- **Special tax regime interaction:** assignments to jurisdictions with expatriate or special tax regimes can lead to unexpected double taxation when home-country ties remain or residence status changes.
- **Implementation risk:** even when an assessment by tax experts is created, implementation in HR and payroll processes is prone to errors in complex cases, leading to delays and risks.
- **Lack of predictability in treaty application:** In many cases, there are no practical mechanisms available for employers to remit tax for staff working in new jurisdictions for short, irregular periods, resulting in situations where even with good-faith efforts treaty positions are not accepted or cannot be operationalised due to domestic administrative constraints.
- **Legacy clean-up:** historical cross-border arrangements which have been accepted by authorities during the pandemic lead to high evaluation and/or clean-up effort years later.
- **Criminal liability:** in some jurisdictions, inadvertently triggering a PE or incomplete withholding of payroll taxes can constitute a criminal offense, despite the lack of intent.

Thus, while global mobility supports economic growth through talent access and productivity gains, uncertainty in tax rules and compliance obligations often limits flexibility, increases costs, and can deter companies from pursuing certain arrangements, particularly for less senior positions.

[1] The same survey was launched in 2024 (not published) and conclusions on this point are still up to date. https://uel.lu/wp-content/uploads/2023/01/uel-enquete-sur-la-pratique-du-teletravail-au-luxembourg-janvier-202316.pdf

Companies have also seen employees decline the opportunity for cross-border assignments due to the administrative burden, even where their companies are offering equalization arrangements to mitigate the incremental financial cost or assistance with individual compliance obligations. This push back from employees reduces the sharing of critical expertise and knowledge across borders, undermining business objectives.

b. Evidence of the impact on employee opportunities and wellbeing?

Employees highly value cross-border flexibility, particularly for development and personal reasons. Short-term cross-border telework supports family needs and caregiving without employment disruption, which improves job satisfaction and employee retention. However, uncertainty about personal tax outcomes such as volatility on net pay, multi-country filings, and penalty risks, often deter employees from pursuing these arrangements.

While companies strive to enable flexible working as part of its employee value proposition, tax compliance considerations significantly influence the approval of requests to work abroad. The threshold for approval is necessarily high because of the potential PE implications and individual tax exposures that can arise.

This also leads to a meaningful number of requests being declined because the associated costs and risks are considered unmanageable. These arrangements often require substantial additional capacity from HR, Finance, Legal and Tax teams to assess and monitor, demanding investment in internal resources and diverting time and attention from other strategic priorities.

c. Evidence of how these trends differ in extent and impact in different regions or economies?

- Businesses observed that the highest volume of remote cases arise within the **EU and EEA** where cross-border teleworking is easier to manage in practice due to harmonised immigration frameworks, strong treaty networks, social security agreements and more sophisticated tax-authority infrastructures that facilitate compliance.

- Businesses noted limiting approvals for remote work in jurisdictions with quota-based work authorisation systems (as observed in the **Asia-Pacific** region). Approvals are particularly restricted in countries with very low threshold for triggering service PE risk through remote work.

- In **North America**, although many employees live and work remotely across different US states, the number of cross-border case requests remains comparatively low.

- In the **Middle East**, strict policies also apply, especially for outbound remote-work during hotter months, where the primary aim is to avoid inadvertently incurring significant tax liabilities, particularly for employees who are tax equalised from zero-tax jurisdictions.

Collectively, these regional variations demonstrate that the feasibility and impact of remote-work mobility are heavily shaped by local regulatory environments, treaty robustness, and administrative practicality.

2. Personal income tax: What fact patterns have you identified that give rise to personal income tax issues in the context of global mobility? For example:

   a. What specific fact patterns arising from global mobility that are creating more than one tax residence for an individual, or resulting in double taxation?

      i. Dual tax residence fact patterns:

- **"Center of vital interests" split:** An individual moves to work in Country B while their immediate family (spouse, children) or permanent home remains in Country A. Country A may argue the person's center of vital interests remains there, thus claiming tax residency, whereas Country B asserts residency based on physical presence (particularly where they exceed day count thresholds, e.g. 183 days) and primary workplace. In several jurisdictions, domestic rules are applied more aggressively than treaty provisions, increasing the risk of double taxation even where treaty tie-breaker rules are applied in good faith

- **Potential multiple taxing rights.** For individuals who own property (in which they reside) in two countries, are dual nationals, have family living or studying in both locations and who work across both jurisdictions, it can be difficult to determine who has taxing rights under Article 4.

- **Mid-year relocations**: An executive from Country X is seconded to Country Y from July onward. Country X counts residency through family/home ties and might treat the person as resident for the full year, while Country Y applies a days-present test and also treats the person as resident from arrival.

The complexity of resolving multi-resident cases is compounded by local interpretations of treaty residency that sometimes favor retaining residence (and tax base) in the home country; clearer, shared documentation standards would reduce disputes.

      ii. Double taxation examples:

- **Divergent treaty application**: Country A's headquarters approach under which a person employed by a Country B branch (belonging to the Country A entity) is taxed for each workday in Country A even if the conditions from the double tax agreement (DTA) are not fulfilled. This gives rise to potential double taxation because Country B tax authorities may view such travel days as being subject to tax in Country B due to non-fulfillment of conditions related to performing work in other state under DTA.

- **Treaty changes**: A DTA was recently changed regarding the treatment of home-office days. Even where employer location and payroll remain unchanged, the

allocation of taxing rights for home-office workdays can shift, creating withholding and reporting implications.

- **Individuals taxed on worldwide income**, regardless of residence location. While mechanisms exist under domestic law to mitigate double taxation, challenges remain including, (a) partial double taxation due to credit limitations; and (b) temporary double taxation and cash flow issues caused by timing differences in tax payment cycles (e.g., Country A calendar year vs. Country B fiscal year).

- **Frequent business travellers**, such as those working on project or while on a business trip in another country part-time and working regularly in their home country.

- Assignment to a host country with a **special expatriate tax regime** combined with continued home-country tax residence, may lead to limited treaty relief and potential tax-on-tax effects.

- **Dual role employees** with travel required to each country, such as a global lead that also has a regional role.

- **Remote work prior to assignment start date**: During this pre-assignment phase (while waiting for a visa), the employee may be required to travel for business meetings in the destination country. However, depending on the contractual structure, being placed on a local contract prematurely can create a risk of double taxation.

- **Divergent treatment of Restricted Stock Units (RSU)**: Jurisdictions apply inconsistent rules, particularly when RSUs are taxed and how vesting periods are treated when employees move between countries. E.g., an employee granted RSUs in Country A moves to Country B before vesting. Country B taxes the full RSU value at vesting, granting credit only for foreign tax already paid. However, Country A taxes RSUs upon sale, often years later, making it nearly impossible to claim a Country B credit for the Country A filing period. Conversely, if the employee later sells shares in Country A, Country A taxes the entire gain, offering credit only for Country B tax on the Country B filing period. This leads to double taxation, with neither country providing full relief.

- **Different treatment of awards under motivational schemes**: Some countries qualify rewards from the motivational schemes to the source from which income was obtained (i.e., employment relationship) while others qualify it as income from capital gains. This creates uncertainty on where transaction should be taxed and there is a risk of not qualifying under the DTA to mitigate double taxation.

- **Discrepancies in sourcing rules of employee share scheme income**: While many countries source from grant to vest, some source based on tax year while others tax

equity when an individual leaves the country. Both these examples can create double taxation.

- **Discrepancies in sourcing rules for cash compensation**: While most jurisdictions source income based on payment date or the employment period it relates to, some countries require employer withholding and reporting on all payments processed through local payroll. Different sourcing rules for home and host country can result in double taxation.

- **Misaligned tax filing and payment periods in the home and host countries may limit foreign tax credit claims**: If one country follows a calendar tax year, while another uses a fiscal tax year, challenges arise due to timing differences in tax filings and payments. Home authorities may not always approve treaty relief, despite eligibility.

    - Example 1. A Country X employee works in Country Y from 1 January to 30 June 2025 and remains a Country X tax resident. Under the Country X–Country Y tax treaty, Country X allows credit for Country Y taxes paid during the assignment. However, Country Y taxes for CY2025 are paid in 2026. For Country X's tax year ending 31 March 2025, the credit for income earned from 1 January to 31 March cannot be determined by the filing deadline (31 July 2025), making the credit unattainable and resulting in double taxation for that period.

    - Example 2. Country X employee works in Country Z, where taxes are paid only after assessment by local authorities, typically at least partially after Country X's tax return filing deadline. Since Country X allows foreign tax credit only for taxes actually paid, the individual cannot claim relief by the due date. Furthermore, Country X tax returns cannot be amended beyond nine months from the fiscal year-end (i.e., 31 December), resulting in double taxation.

- **Practical challenges and country specific application of rules surrounding treaty relief claims**

    - **Nationality Restrictions** - Some countries, restrict foreign tax credit ("FTC") under tax treaties to their own nationals. Foreign nationals working temporarily abroad often face double taxation, with employers typically absorbing the cost under tax equalisation programmes.

    - **Documentation Requirements** – Some countries mandate a tax residency certificate to claim an FTC under treaties. Many jurisdictions either do not issue these certificates or have lengthy, costly processes, resulting in double taxation when documentation cannot be obtained.

    - **Inconsistent Application** - Certain tax authorities inconsistently approve FTC-related refunds for expatriates. This creates uncertainty for individuals and

complicates employer budgeting under tax equalisation programmes, potentially impacting profitability when anticipated credits fail to materialise.

b. What specific fact patterns arising from global mobility that are creating risks of no tax residence, or result in low or non-taxation?

Certain patterns, such as fragmented presence across multiple jurisdictions, timing mismatches in residency rules, and informal remote work arrangements, can result in periods where individuals are not considered tax resident anywhere or benefit from low or non-taxation.

- **Frequent cross-border mobility without meeting residency thresholds** - The most common driver of "stateless" tax status is the intentional or accidental fragmentation of an individual's physical presence. Individuals that travel frequently, executives that work multi-jurisdictionally or digital nomads could move between several countries within a year without meeting domestic residency tests (e.g., 183-day rule) in any jurisdiction. This could create individuals with "stateless" tax positions where no country asserts residency.

- **Differing criteria for tax residency** - Countries apply residency rules differently with some recognizing residency from the start of the fiscal year while others apply ongoing day-count or centre-of-vital-interests tests. This could result in dual non-residency during transition periods when leaving one country mid-year and entering another that only applies residency from the next fiscal year.

- **Remote work without clear employer nexus** - Remote-work cases where employees relocate informally without triggering formal immigration or registration obligations can also create mismatches, resulting in periods where it is unclear which country asserts taxing rights. These situations are rare, however.

- **Use of Territorial or Exemption Regimes** - Relocation to countries with territorial tax systems or expat exemptions combined with non-resident status in the home country, can lead to partial or full exemption on foreign income.

- **Employer misclassification or compliance gaps** - Treating globally mobile employees as independent contractors or failing to maintain shadow payroll in the host country could lead to non-reporting of income locally, especially where enforcement is not robust.

- **Short-Term Assignments and "Split Contracts"** - Assignments structured so that salary is paid in a low-tax jurisdiction while work is performed elsewhere. If neither country enforces taxation due to short duration or treaty gaps, income may fall through the cracks.

- **Relocation to Low-Tax or No-Tax Jurisdictions** - Moving to jurisdictions with zero or very low-income tax while ceasing residency in the home country. If home country does not apply exit tax or deeming rules, income may remain untaxed.

These patterns are relatively rare in structured corporate mobility programs, as most employers assume employees maintain tax residency in their country of employment. The highest risk applies to individuals not taxed on worldwide income, self-employed individuals or true digital nomads who actively manage their presence to avoid residency.

c. What specific fact patterns arising from global mobility that are creating challenges or uncertainty for businesses (e.g. tracking employee movements, multiple filing obligations, withholding obligations that apply in respect of one or only a few days of physical presence)?

While the 2025 update to the Commentary on Article 5 provides a welcome framework for determining PE based on specific thresholds, there is no corresponding guidance for Article 15 (Income from Employment) and divergence with domestic payroll tax and social security laws and regulations, which leave individuals and employers facing disproportionate compliance costs and tax liabilities for the exact same activity.

Businesses face significant uncertainty and cost due to fragmented rules, short-presence triggers, social security mismatches, and PE interpretations that place disproportionate weight on physical signing or incidental acts. Aligning Article 15 practice with Article 5 safe harbours, adopting single-point withholding models or employer led remittance models, optional one-stop-shop mechanisms, and coordinating social security rules with PE guidelines, would materially reduce compliance burdens while preserving revenue protection.

1. Withholding, Payroll and Compliance Obligations for Minimal Presence

The combined effect of mobility programs—short-term staffing, local transfers, rotational projects, and remote-work requests—creates significant operational challenges in tracking and compliance. Even a few days of presence can trigger multiple filing obligations in certain jurisdictions.

Although Model Treaty Article 15 generally exempts presence under 183 days, **domestic payroll rules often impose withholding regardless of treaty relief**. Countries applying an "economic employer" concept or where a branch structure exists can trigger tax obligations from **day one**. Moreover, withholding rules vary widely; some markets require immediate payroll registration for minimal presence, while others allow year-end regularization.

Even when treaties technically exempt employees, the **administrative burden** to claim relief can be steep:

- Some countries impose reporting obligations on an employer to claim a treaty exemption. E.g., a non-resident employer in a treaty country that has a business traveler to Country A is required to withhold and remit Country A income tax and file a year-end wage statement with the tax authorities. In addition, the employee has to file a local tax return to claim a treaty position to refund the tax withheld.

- Some countries require a formal advance agreement for exemption from withholding while other jurisdictions demand formal claims, creating heavy administrative load for businesses and regulators.
- Some countries provide for an arrangement designed to reduce payroll complexity. However, the rules are highly technical and require careful assessment of factors such as tax residency, economic employment, and day-counting, increasing the risk of errors and potential challenges. This requires companies to accurately track presence of short-term business visitors and maintain detailed records, even though the legal employer is typically the overseas group company. This creates significant administrative burden and compliance challenges, as control over the necessary data may be limited.
- Some countries disregard the 183-day standard if filings aren't made—business trips exceeding 60 or 90 days can trigger domestic tax liability. Dual filing in home and host countries adds complexity, often requiring outsourced tax services at company expense.
- In some countries, state-level laws often do not follow federal tax treaties, creating a PE or withholding obligation at the state level even when the company is protected at the federal/international level.

2. Social Security and Shadow Payroll Mismatches

Social security rules are incongruent with income tax treaties, leading to "double-dipping" or expensive administrative requirements. In the absence of totalization agreements, social tax and income tax are often **payable from day one.** This requires registering an entity and paying into a system that the remote worker will likely never benefit from. In some countries, there are **no de minimis thresholds** and while an employee may be treaty-exempt for income tax, the employer must still **remit to the pension plan** from the first day, as treaties do not cover this charge.

- Example 1: A non-resident employer in a treaty country that has a business traveler to Country A does not have to withhold Country A income tax on that employee's Country A -sourced wages and no paperwork to claim this position. However, the employer is required to withhold social tax unless 1) a totalization agreement is in place, and 2) the employer applies for an A1/COC. If a treaty and totalization agreement are in place, coverage under each should be aligned and a covered individual should receive the benefits of those agreements without having to proactively claim coverage by submitting paperwork.

- Example 2: An employee works more than 25% of their time in their home country but is employed by a company in Country B, the Country B employer must register in the employee's home country and withhold and pay social security contributions there. This process is administratively complex and costly. Additionally, the company ends up with an employee on a Country B contract and salary who is working outside of Country B, while paying high employer social security contributions in a country that may be more expensive than Country B. It further seems inequitable that the

employee receives the same Country B salary regardless of location, and the employer cannot require the employee to cover the home-country social security contributions.

Even where agreements exist, some countries require businesses to apply for a **Certificate of Coverage (CoC)** for even very short durations, creating "unnecessary administration" for travel that has no substantive tax impact.

Finally, maintaining **"shadow payrolls" to report foreign-sourced income is complex**. Some countries have rules for this, but in many other countries, the mismatch between home and host country payroll schedules makes meeting local deadlines nearly impossible.

These issues and examples highlight the need to coordinate tax and social security thresholds (e.g., defer employer social security registration until a minimum of 60 days presence or >50% working time in 12 months). It would further be helpful to **standardise and digitise certificates of coverage** and introduce reciprocal recognition to avoid double contributions. Moreover, there should be **clear, non-aggregated day-count rules** and guidance on tracking methods (e.g., travel data, device logins) with data privacy and secure exchange safeguards.

3. Complexities in Allocating Compensation

Allocating pay across different countries for mobile employees is a major source of error and audit risk.

- **Equity compensation complexities**: If an employee works in multiple countries over a vesting period, the employer must apportion the equity income across all those jurisdictions which creates unexpected withholding or reporting obligations.

- **Severance and Benefit Allocation**: Different countries use different look-back periods for severance (e.g., last year vs. full-service duration).

- **Split payroll challenges**: Large organizations often pay an employee through two entities (e.g., 80% host, 20% home) to maintain home-country pension and healthcare. Some jurisdictions impose registration and audit requirements on the *home* entity purely because it is a "payer," even if the host entity has already withheld and reported 100% of the tax. This results in duplicated compliance obligations, increased error and penalty risk and creates artificial indicators of PE for the home office. This issue arises routinely in international assignment programs across multiple jurisdictions. A proposed solution would be to adopt a single-point withholding and filing model for employment income taxation in the work jurisdiction, while recognising that remuneration may continue to be paid by multiple group entities for non-tax reasons (including continuity of home-country social security, pension or benefit arrangements).

4. **Operational Complexity in Tracking Employee Movements**

Businesses struggle to track where employees are physically working, which is the **"burden of proof"** usually placed on the employer. Hybrid/remote arrangements or employees working cross border without formal approval leave the employer unknowingly exposed to host payroll registration and legal risks. Moreover, many companies rely on **manual processes or disparate systems**, increasing the risk of errors and non-compliance.

In the frontier worker context, companies also contend with **data privacy rules** e.g., Country A legislation prohibit sharing certain employee data with Country B authorities, despite Country B requirements for the Country A company to report income.

Certain countries also impose **onerous evidence standards**. For example, some tax authorities require physical copies of entry/exit stamps in passports to prove presence, creating a massive data management burden.

In addition, virtual assignments or roles often involve periodic travel where the **nature of the work is unpredictable**, making it difficult for businesses to set up compliance proactively.

4. **Unintended Permanent Establishment (PE)**

Incidental activities can inadvertently create a corporate tax presence for the employer, even for very brief stays.

- **Incidental Contract Signing:** In some jurisdictions, the physical place of an electronic signature is determinative. A manager signing a contract while on a brief business trip or a "workation" could inadvertently trigger dependent agent PE (DAPE). While the physical place of signing is a relevant factor, there should be distinction between habitual, substantive contract-concluding activity and incidental signing during temporary travel.
- **Procurement hubs.** An MNE headquartered in Country A operates an offshore procurement hub. Strategic decisions such as pricing, scope, risk are made in Country A while the procurement hub signs documents for administrative purposes (e.g., issuing POs or standard supplier schedules) to implement pre-approved terms. Similarly, the physical act of signing could be treated as creating potential DAPE exposure, even when all substantive decisions and authority to bind occur elsewhere. This results in burdensome internal controls (e.g., banning off-location signatures, restricting POAs) that slows down operations without improving compliance or revenue protection.

d. Are there examples where the existing rules, bilateral or regional agreements and treaties (e.g. frontier worker agreements) are effective at facilitating cross-border working with minimal compliance burdens? Why?

Members noted that the following frameworks and agreements are effective at facilitating cross-border work with minimal compliance burdens.

1. EU Framework Agreement

Within the EU, many compliance burdens and risks are limited particularly due to **EU Regulation 883/2004, the EU Framework Agreement and Free Movement of Workers**, which provides more flexibility for international remote working.

In certain countries, there is no requirement for advance approval from tax authorities to work in the destination country nor is continuous reporting required on movement. An electronic document filed by the employer or employee supports the social security system applicable to the worker (i.e., of their home country) and prevents dual social security contributions. Examples of such frameworks include **Øresund Agreement** between Denmark and Sweden,[2] **Switzerland-France Telework Agreement**,[3] and the Multilateral Framework Agreement on **Cross-Border Telework (TWA) for EU/EFTA countries**.[4]

Frontier-worker agreements stabilise taxing rights for employees who live in one country and perform client work in another, e.g. France, Switzerland and within the Nordics. Some regulations grant limited home-office days (e.g., 34 days for workers between Germany and Luxembourg or the Netherlands), which exempt foreign employers from reporting, withholding, and remitting payroll taxes in the home country, among others if the individual is covered by the social security system of the employer's country (although harmonized, more generous limits would help). Finally, **digital tools** like EURES and standardized A1 certificates streamline administration.

2. Bilateral North America Agreements

The **North American Free Trade Agreement (NAFTA)/ United States-Mexico-Canada Agreement (USMCA)** provisions for temporary entry of business professionals and intra-company transferees because it provides clear visa categories with predictable processing; exemptions from labor market tests reduce delays; and harmonized documentation requirements simplify compliance for employers.

e. What specific fact patterns have led to disputes being taken to MAP or domestic dispute resolution in the context of global mobility? If the outcome was positive, what feedback would you have for future cases? What dispute prevention tools (e.g. advance rulings) would you consider to be relevant to explore here?

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[2] Remuneration for work is exclusively taxed in the employer's country if the individual works at least 50% in that country over a 12-month period. Employers are not obliged to register and report remuneration when the agreement's conditions are met.

[3] Cross-border workers may engage in remote work from their country of residence up to 40% of their annual working time without losing the tax treatment (income tax and social security) they would receive if all work were performed in the employment country. Workers and employers maintain records of where work is performed and can produce these records if needed for verification, but do not require advance approval or continuous reporting.

[4] Permits cross-border telework up to less than 50% of total working time without triggering a change in social security obligations; relies on an A1 certificate, an electronic document with three years validity (with extendability) that confirms which country's social security system applies to a worker.

Disputes with or enquiries from tax authorities most commonly arise from:

- Dual residence determinations where treaty tie-breaker factors are weighted differently by each authority.
- Short-term business travelers where withholding obligations are applied despite limited physical presence.
- Social security requirements for business traveler and remote work arrangements.
- Service PE interpretations that indirectly affect personal income tax by shifting withholding/taxation expectations.

Members have not had such disputes to be taken to MAP. Successful outcomes from cases under review reinforce the importance of **early engagement and documentation** demonstrating the individual's centre of vital interests and the employer's staffing rationale.

Advance tax rulings for inbound business traveler wage tax obligations can be effective but underutilised due to inconsistent processes across countries. Some have noted that employers hesitate to pursue advance rulings when timelines are lengthy.

f. What solutions to address global mobility of individuals have you encountered, whether in the tax area or drawing upon other disciplines? What recommendations do you have in this area, considering both policy design questions and aspects of compliance and administration? If so, please explain why and set out any further suggestions you might have. Where possible in responding to the above questions, share specific (anonymised) examples, fact patterns or tax administrations' application or interpretation of existing provisions, as well as commentary on how those challenges practically impact a business or an individual.

We appreciate the update to the Commentary to the Model Tax Convention on home office PE as a good first step in providing clarity in respect of the taxation issues regarding remote working. As noted above an **international coordinated framework** is critical to managing global mobility of individuals.

1. **International harmonisation of short-term presence rules**, especially for business travellers. The IF could consider providing an **all-purpose safe harbour** for temporary cross-border work for an employee's personal reasons.

When employees temporarily work from another country for personal reasons, employers face disproportionate uncertainty. Aside from the PE issue, a few weeks of remote work could potentially risk individual income tax liability withholding, payroll registration, and social-security obligations in the host country; often for little or no incremental revenue to the host tax authority.

Better alignment of tax and social security rules, synchronizing definitions (i.e., day of presence, resident) and better alignment with immigration and corporate-tax concepts to

minimize dual contributions and benefits gaps would greatly enhance certainty and ease compliance and administration.

Consideration could be given to the establishment of a <60/90-day teleworking safe harbor that provides that an employee's temporary presence in a particular jurisdiction for the purpose of teleworking for personal reasons, would not give rise to a PE, individual income tax liability, nor any transfer pricing or employer-related tax/withholding or social security obligations implications in the country where the employee is temporarily teleworking for personal reasons (i.e., the days and services performed during those days should be disregarded for all tax purposes). This would avoid one-day payrolls and refunds.

In addition, guidance on the following aspects would be helpful:

- Standardized day-count thresholds across countries. Days counted under the safe harbour should be applied on a per-employee basis and not aggregated.
- More explicit OECD examples covering below 50% remote-work cases beyond 12 months.
- Clarify treaty treatment of home-office days for cross-border commuters/frontier-like workers, including practical payroll withholding solutions.
- Coordination principles for special expatriate tax regimes to mitigate double taxation when residence status is contested or changes.

2. **Improving mechanisms for compliance**. Practical mechanisms to support employers who are trying to comply in this area from the tax authorities is essential. These mechanisms could include:

- Promoting standardised, digital, interoperable documentation for day tracking, social security coverage evidence and automated reporting would be helpful.
- Digital solutions for residency certification: Mutual recognition of electronic residency certificates to streamline treaty relief at source.
- Mechanisms allowing employers to remit tax on short-term presence even where no payroll registration is available or for special exemptions/minimalized administration requirements for staff below low thresholds.

3. Corporate income tax: What fact patterns have you identified that give rise to corporate income tax issues in the context of global mobility? For example:

   a) What specific fact patterns arising from global mobility create a risk of permanent establishment or, affect corporate tax residence in ways that you think are not appropriate or desirable and why?

i. Remote work by Key Employees or Board Members

Guidance would be appreciated with respect to senior personnel who regularly work cross-border for personal reasons. As their position involves making key corporate decisions including approving budgets, projects, contracts, etc., there is high risk of creating PE. This

includes concluding contracts for the specific, limited period they are working from home, which could inadvertently create a dependent agent PE.

Tracking employee locations and activities has become a major compliance challenge to monitor days worked in each jurisdiction, assess the nature of activities performed, and evaluate whether local tax registration or withholding obligations arise. In addition, if PE does arise, it is challenging to determine which entity should bear the associated costs and risks, and which entity is entitled to the returns from those activities.

Moreover, executives or board members' location may influence the "place of effective management" and consequently, the corporate tax residence of the enterprise. For jurisdictions that determine corporate tax residency based on effective management (i.e., location of the board meeting), the IF can seek to establish a global consensus to recognize virtual board meetings as valid for the purpose of establishing tax residency. It would be helpful if guidance clarified that the deemed location of a virtual board meeting can be the country in which at least fifty percent (50%) of the board members are physically present and/or where the Chairman is located at the start of the meeting.

ii. Fixed-place of business – some areas of uncertainty:

- **Long term remote work but for less than 50% of the year** - The treaty commentary update does not cover scenarios in which individuals work remotely from home for less than 50% of their time as a recurrent and permanent pattern beyond 12 months yet subsequently establish a commercial connection to the jurisdiction (e.g., by developing a local client base simply because they reside there). To close this gap, the OECD should add an example explicitly covering cases where remote work below 50% continues beyond a year and where commercial ties form as a by-product of personal residence rather than enterprise-driven activity, as this fact pattern is increasingly common and currently unaddressed.

- **Client office/Enterprise office at home country** - Employees working from a client's office should not be treated as having such office "at the disposal" of the enterprise because the worker is present in the client's office under clear conditions defined by the client and not the enterprise. Similarly, the use of offices which have been made available by the company in the home country of the employee can be considered a "fixed place of business" which presents challenges.

- **Managing time zones** - While the language in the update to the treaty commentary is generally favorable, Example E may be quite confusing as it indicates that any difference in time zone could be interpreted as creating a commercial basis for the remote location. Often, employee schedules will flex to make the best use of a location, whether by permitting asynchronous work or by allowing an individual to flex to meet the home country business hours or working locally and capitalizing on local time zones. Introducing a subjective assessment of whether local time zones are better for a foreign employer introduces confusion to the guidance.

- **Administrative employees –** An employee providing routine or administrative working cross-border long-term and primarily from a home office for personal reasons would meet the "fixed" and "50% working time" threshold under the current guidance. The primary reason the enterprise permits the work from the home state is to obtain the services of that individual. Although the employee performs routine commercial functions globally, their physical location is not commercially driven by a need to penetrate that specific market or engage substantially with local clients beyond an intermittent or incidental basis. Guidance on these scenarios would be appreciated to mitigate the risk of mini-PEs with administrative burdens disproportionate to the negligible profits attributable to the activity.

- **Stuck employees -** The concept of "stuck employees" gained prominence during the COVID-19 pandemic, when many businesses and employees benefited from regulatory relief for employees unable to return to their primary work locations. While the COVID-19 crisis has passed, similar situations continue to arise when employees are traveling such as medical emergencies, severe weather events, or unexpected changes in immigration laws. Business would appreciate guidance to address these scenarios, where employees face unforeseen circumstances beyond their control. An additional safe harbor of up to 90 days would be helpful to allow companies to determine the right response, as these types of emergencies are not tax-driven and require cross-functional solutioning (e.g., immigration, legal, security, etc.).

iii. Service PE

A PE risk may arise from long-duration service projects. A one-off project lasting more than 183 days should arguably not create a PE if there is no recurring or continuous business presence. On the other hand, recurring projects exceeding a year could justifiably trigger PE exposure. The absence of standardized day-count rules (e.g., UK's 60-day HMRC threshold) as well as determining whether projects are "connected" (e.g., same partner, same client, similar scope) remains unclear, generating further uncertainty.

It may further be helpful to align Service PE provisions (about 90 days for a 12-month period in some treaties) with the threshold for remote workers (i.e., "50% of working time over a 12-month" period).

b. What fact patterns arising from the global mobility of employees create challenges in attributing profits to permanent establishments? Are those challenges due to applying the Authorised OECD Approach (2010), such as identifying the significant people functions in scenarios of global mobility of employees, or do they stem from different jurisdictions using varied profit allocation approaches? Do you see these issues more often in specific industries or business

While the AOA provides a helpful framework by hypothesizing the PE as a separate and independent enterprise based on functions performed, assets used, and risks assumed, it relies on binary assumptions about the location of decision-making that contradict the fragmented and virtual nature of modern operations.

In a highly mobile environment, identifying the singular location of Significant People Functions (SPFs) and Key Entrepreneurial Risk-Taking (KERT) functions have become increasingly difficult, creating significant compliance and documentation burdens and uncertainty.

Some members have observed that they have rarely seen AOA implemented in practice noting **challenges in its application**, raising the following questions for example:

- What constitutes revenues - should it be what is billed to the client locally or what is generated by the work force when present in such state (and therefore not for the entire time nor entire revenues?
- Which costs should be allocated, all direct and indirect costs?
- What constitute SPF and KERT in the context of short-term client engagements?

Others noted that having employees who work in different business areas, on different projects commute to the same country in different time periods make it challenging to define the activity in the PE and allocate profits. Mini-PEs further exacerbate this challenge.

Also, many core functions (risk measurement and mitigation, treasury, risk limits, credit decisions, and compliance) are increasingly executed through **standardized global policies and centralized technology**. Where centralized systems gate decisions, attributing returns to the location of a certain group of employees is considered to overstate the significance of people in value creation, particularly in light of the mobility of these employees. Anchoring profit attribution to mobile personnel is considered to mislocate residual returns away from the jurisdictions hosting, funding, and governing the assets. Different tax authorities identify different individuals as performing SPFs (or allocate different weights to their activities), increasing controversy and the need for MAP/APA processes, and in some instances to residual unresolved double tax.

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Below are some other examples of fact patterns where the current guidance may present challenges for companies.

Issue	Current 2010 Approach	Modern Business Challenge	Recommended Update
Key Decision Maker Relocation (KDM) (global decisions, no other changes)	Profit follows SPFs; if strategic control remains centralized, PE performs only routine functions	C-suite/KDM relocations create presumption that decision-making moves with them. Tax authorities challenge "routine" characterizations. The AOA assumes binary control; modern decision-making may be fragmented/virtual	Acknowledge geographically dispersed SPFs. Provide rebuttable presumptions: • Short-term (≤1 year) + ultimate operational control remain centralized = a rebuttable presumption that only routine or high value added services (depending on the role of the KDM) are carried out by the PE • Long-term (>1 year) + centralized control = higher burden to prove control didn't transfer
KDM Departure (no operational changes)	Assets/risks follow SPF cessation. PE profit claims cease when key functions depart	Ignores legacy value creation and Chapter IX TPG business restructuring guidelines. Example: Sales rep builds recurring customer contracts then quits - SPF for risk origination is gone, but assets remain. Does PE lose income streams from existing SPF-created assets? AOA says future profits follow SPF moves, but Chapter IX suggests exit charges for value transfers. The AOA doesn't clarify the Article 7/transfer pricing interaction.	Specify new risks stop being attributed, but existing SPF-created assets remain attributed until maturity/transfer. Reference Chapter IX TPG to prevent profit-shifting via personnel moves without value transfer recognition
Substitute Employee Hiring (other SPFs unchanged)	IP ownership determined by SPFs for development / management. Replacements only change ownership if assuming IP decision-making functions	Predates BEPS Actions 8-10 (DEMPE). While logic similar, outcomes differ when substitutes have risk control	Explicitly adopt DEMPE concepts for PE IP profit attribution

To address these challenges, an OECD update to the guidance to reflect distributed business operations by introducing a timing safe harbor for SPF changes would be appreciated. Acknowledging that SPFs can be geographically dispersed, and IP development does not happen overnight, the OECD could consider introducing a transition period (e.g., 12 months) when key people functions relocate.[5] This safe harbor would allow companies to maintain existing profit attribution models while assessing whether a relocation reflects a genuine operational shift or a routine remote-work arrangement. By preventing immediate and disruptive profit reallocations based solely on personnel movement, a safe harbour ensures that attribution remains proportionate, limiting returns to routine functions unless a broader restructuring occurs. It also introduces controlled compliance by requiring formal documentation only if changes become permanent and defers full DEMPE/SPF analysis until intellectual property reaches commercial viability. This transitional approach, ideally for up to 12 months, reduces uncertainty and administrative burden while safeguarding against inappropriate profit shifting.

c. What specific fact patterns arising from global mobility create particularly challenging questions related to transfer pricing? Are there specific areas of the OECD Transfer Pricing Guidelines (or the Authorised OECD Approach) that are challenging to apply in the context of fact patterns arising from the global mobility of employees?

The following fact patters create challenging questions for transfer pricing.

i. **Temporary High-Value Functions:** When employees perform significant non-sales functions in another jurisdiction temporarily, determining where value is created, and which entity should be remunerated is complex. Application of the AOA consistently is difficult when employee presence is temporary, fragmented, or remote.
ii. **Cross-Entity Activities:** Employees in one entity often perform activities benefiting another entity in a different jurisdiction, complicates the delineation of intercompany transactions and allocation of value.
iii. **Senior Management Dispersion:** Movement of key personnel and senior roles across entities adds complexity to functional analysis and risk allocation.

Moreover, documentation requirements have increased, and there is a heightened risk of disputes with tax authorities over transfer pricing outcomes.

The updated PE commentary under Article 5 does not address the transfer pricing (TP) and profit allocation implications if a PE is determined due to the activities of a remote worker.

[5] Although outside of scope of the Global Mobility workstream, we recommend that the OECD consider a similar approach with respect to determination of profits to be attributed to a PE or an entity after an IP asset is acquired or at early stages of IP development.

- Consider applying the same principles to remote workers that works cross border for personal reasons as to those who **are seconded to an affiliate entity** in the jurisdiction to facilitate payroll and other compliance (i.e., moved from their home payroll system to the remote work location payroll system). In this case, the appropriate arm's length compensation for the services of the seconded employees in question will be the only payment required.

- In respect of determining the **"arms-length" consideration**, we would recommend considering providing a safe harbor under a cost-plus basis consistent with the AOA for most cases; confirming application of profit split methodologies is not appropriate and if applied, losses must also be allocated.

- Provide some mechanism for global mobility **profit attribution** in situations that **fall short of a PE**. Where mobile employees enhance local functionality or create local value, applying TP guidelines and determining the profit to be attributed can become difficult.

- Promote APAs for certainty in complex global mobility cases.

iv. How material are these fact patterns to business operations?

These issues are highly material and can create significant operational and compliance uncertainty. For example, in one project, the team's presence approached the PE threshold, prompting the dilemma of whether to withdraw personnel or register a PE for a one-off engagement, considering that the registration and filing process of the PE would itself take more time than the full duration of the project. Such scenarios disrupt project delivery, add cost, and increase risk, especially when registration and compliance processes take longer than the project itself.

v. What types of fact patterns have led to disputes being taken to MAP or domestic dispute resolution in the context of global mobility? If the outcome was positive, what feedback would you have for future cases? What dispute prevention tools (e.g. advance rulings or APAs) would you consider to be relevant to explore here?

While no cases have reached Mutual Agreement Procedure (MAP), there have been domestic audits. For example, an audit challenged the presence of a team working for more than 183 days over consecutive years, asserting a fixed place of business PE where the employees had been working at the client premises. This outcome underscores the value of clearer advance guidance or rulings to prevent similar disputes.

vi. Do you have any other observations on any other challenges related to corporate income tax arising from global mobility?

a. Reporting obligations for PE for short-term projects

As discussed above, the process of registering and maintaining a PE can be disproportionately burdensome for short-term projects which last more than 183 days –

often lasting longer than the project itself. Consideration should be given to providing commentary on simplified or voluntary WHT mechanisms as alternatives to full PE registration where the corporate income tax impact is minimal. Streamlining registration and compliance requirements could significantly reduce administrative inefficiency for short-term or low-risk projects

b. Consideration for employer policies

Future guidance should consider employer policies on remote working including remote work at the request of the employee for personal reasons (e.g., whether prohibited, only for a certain number of days during a specified period of time for personal travel), including if an employee fails to adhere to the policy. For example, the policy should be considered in situations where an employee operates outside of established policy terms and guidelines, especially if the employer is unaware of the breach or has implemented safeguards to help ensure compliance.

c. Develop MLI for the Updates to the Model Treaty Commentary

The updated Commentary, while much appreciated, only provides certainty if jurisdictions adopt it. Many tax authorities use a static interpretation of treaties, so changes may not apply for years—or at all—without formal adoption. This creates uncertainty over whether a jurisdiction follows the new guidance, an older version, or a hybrid. It would be appreciated if the IF could develop a new Multilateral Instrument (MLI) to consolidate recent updates to the Model Tax Convention and Commentary. Building on the success of the 2017 MLI, this would allow jurisdictions to efficiently adopt modern PE and home-office interpretations without renegotiating each bilateral treaty, reducing administrative burdens and providing taxpayers with clear certainty.

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Conclusion

Our *Business at OECD* members feedback underscores that global employee mobility is now an inherent reality for multinationals and this trend is expected to increase. Addressing global mobility challenges requires coordinated action. We would appreciate the OECD and Inclusive Framework's consideration of these issues and feedback, and work towards aligned and practical solutions including the adoption of standardized safe harbours for short-term cross-border work, harmonizing tax and social security thresholds, and accelerating treaty modernization through a new MLI.

Clear guidance on PE, transfer pricing, and personal income taxation, combined with digital compliance solutions, will reduce administrative burdens and provide certainty for businesses and employees. These measures are essential to support economic growth and talent mobility in an increasingly global and digital economy. *Business at OECD* stands ready to collaborate on practical solutions that balance revenue protection with operational feasibility.

Sincerely,

Daniel Smith

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Cc: Hanni Rosenbaum, Executive Director, *Business at OECD* (BIAC)