



## Cross-border remote work:

What employers should know about the latest OECD guidance and other Canadian tax considerations



### Background

The rise of remote work arrangements has fundamentally reshaped the modern workforce. While employers and employees were already exploring flexible work options before the pandemic, the pace and scale of adoption accelerated dramatically during this period, and the trend has firmly carried into today's new normal. As cross-border mobility becomes more fluid, businesses are seeking clearer guidance on how international remote work affects their global tax footprint, particularly around permanent establishment (PE) risk and other related tax implications.

In response to these developments, the Organisation for Economic Co-operation and Development (OECD) released the [2025 Update to the OECD Model Tax Convention on Income and on Capital](#)<sup>1</sup> (the “2025 OECD update”) on November 19, 2025. This update introduces new commentary on remote-working PEs, providing timely and much-needed direction for employers. It serves as a framework for countries, including Canada, to assess their positions, though local adoption and interpretation may vary.



## OECD commentary

The 2025 OECD update introduces significant clarifications to Article 5 regarding when cross-border working may create a PE for an employer. Key points include:

- Working from a home office or “other relevant place” (e.g., a second home, a holiday rental, the home of a friend or relative, etc.) that is not accessible to the employer generally does not create a PE, unless the employee works from that location for at least 50% of their total working time over any 12-month period.
- Even in such cases, a PE generally will only arise if the employer has a commercial reason for the employee’s activities in that jurisdiction.
- The assessment is fact-specific, focusing on actual conduct rather than contractual arrangements, and the OECD provides practical examples to help organizations evaluate risk.

The 2025 OECD update provides employers with a clearer framework for managing cross-border remote work, reducing uncertainty, and enabling proactive risk management. Deloitte has published a [summary](#)<sup>2</sup> of the new commentary, while this article focuses on the Canadian specific issues.



<sup>1</sup> Organisation for Economic Co-operation and Development (OECD), “The 2025 Update to the OECD Model Tax Convention,” OECD Publishing, Paris, November 19, 2025.

<sup>2</sup> Deloitte, “[OECD Model Tax Treaty Update: New Guidance on Remote-Working Permanent Establishments](#),” tax@hand, November 20, 2025.





## Canadian tax considerations - PE

While the OECD guidance is a useful reference point, the Canada Revenue Agency (CRA) applies its own interpretation, which may differ. The CRA first considers whether the foreign employer is “carrying on business in Canada” under the Income Tax Act and, if so, whether that business is carried on through a PE as defined by the relevant tax treaty.

The CRA’s positions on the creation of a remote-working PE have been largely consistent with pre-2025 OECD commentary:

- The mere presence of employees working remotely in Canada does not automatically create a PE.
- When determining whether a PE is created, key factors include:
  - The nature of the work being performed in Canada.
  - Whether the home office is at the employer’s disposal (e.g., employer pays rent, has access, or requires the employee to work from home).
  - Whether the activities performed in Canada are core to the business or are ancillary/supportive.
  - The level of control or supervision exercised by the employer over the Canadian work location.
- A home office used at the employee’s discretion and not required by the employer is unlikely to be considered a PE.<sup>3</sup>

The CRA has provided examples where internal support roles (e.g., HR or accounting) performed from Canada are unlikely to create a PE. However, profit-generating activities, such as product development or client-facing services, may increase PE risk, especially if the employer exercises control over the home office or these activities are core to the business.

It is also important to consider the existence of a deemed PE under the “agency PE” and/or “services PE” provisions included in certain tax treaties. For example, under the US–Canada tax treaty:<sup>4</sup>

- An agency PE may arise if a Canadian employee routinely concludes contracts on behalf of the foreign employer.<sup>5</sup>
- A services PE may arise if services are provided in Canada for an aggregate of 183 days or more in any 12-month period in respect of a single project or connected projects for Canadian customers.<sup>6</sup>

The OECD commentary did not note any Canadian reservations; however, it is still unclear whether the CRA will adopt the OECD’s two-pronged approach (i.e., the 50% threshold and commercial reason). For now, PE determinations in Canada will continue to require a detailed, fact-specific analysis.

<sup>3</sup> CRA document no 2023-0965771C6, “Remote Work Arrangements,” IFA Roundtable 2023, Question 5, May 17, 2023.

<sup>4</sup> The Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital, signed on September 26, 1980, as amended by the Protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and September 21, 2007.

<sup>5</sup> Ibid., Article V(5).

<sup>6</sup> Ibid., Article V(9).





## Other Canadian tax considerations

Remote work in Canada can trigger tax obligations beyond the creation of a PE:

- **Corporate tax filing:** Even if a PE is not created, foreign corporations may still be required to file a treaty-based return if they are considered to be carrying on business in Canada. The threshold for “carrying on business in Canada” is relatively low; simply having employees working remotely in Canada may meet this requirement. In such cases, the foreign corporation will be required to register in Canada and file a treaty-based tax return with the CRA to claim its treaty exemption. It should be noted that the tax return generally requires the taxpayer to disclose information about both resident and non-resident employees and subcontractors working in Canada, making it especially important for the taxpayer to consider any related withholding tax obligations.
- **Regulation 105 withholding:** A 15% withholding tax generally applies to payments for services rendered in Canada, regardless of PE status, and even between two non-resident entities. Thus, if a non-resident corporation has employees working remotely in Canada and charges a service fee for their work physically performed in Canada, Regulation 105 withholding may apply to the payment of such service fee whether it is paid by a Canadian corporation or another non-resident entity. While it is possible to apply for a waiver, the current application process is generally found to be administratively burdensome. It is also worth noting that Quebec imposes an additional 9% withholding where the services are rendered in the province of Quebec.<sup>7</sup>
- **Regulation 102 withholding:** Employment income paid to non-resident employees for services performed in Canada is subject to payroll tax withholding. This means that the portion of the employees’ income attributable to their workdays in Canada would be subject to source deductions in Canada. There is no *de minimis* threshold, and it applies even if the employment income is ultimately exempt under a tax treaty. The CRA offers an individual-level waiver (Form R102-R) and Non-resident Employer Certification (Certification) to ease withholding requirements where certain conditions are met, but both still have compliance obligations and tracking requirements.



<sup>7</sup> Regulation respecting the Taxation Act, CQLR c. I-3, r. 1, section 1015R8.



- **Province of employment (POE):** There are often additional nuances to consider for domestic (inter-provincial) remote work. One that is often overlooked is the POE which not only has direct impact on source deductions for income tax purposes but also carries potential impact on provincial employer payroll tax reporting. Currently, five provinces (British Columbia, Manitoba, Ontario, Québec and Newfoundland) and two territories (Northwest Territories and Nunavut) impose employer payroll taxes, which are not governed under the Income Tax Act, but rather under the relevant provincial/territorial legislation. Audit activity in this area has increased, with provincial ministries cross-referencing information from both corporate income tax and employment tax filings.
- **Indirect tax considerations:** Even without a PE, non-residents carrying on business in Canada and making taxable supplies may be required to register for the goods and services tax/harmonized sales tax (GST/HST), charge tax on Canadian sales, and file GST/HST returns, subject to the small supplier exception and other specific rules. While the terminology may be similar, “permanent establishment”, “carrying on business” and “taxable supply” are distinct concepts for indirect tax purposes, and the analysis is fact specific and may differ from income tax determinations. Both cross-border and inter-provincial remote work may, in certain circumstances, give rise to GST/HST registration and compliance obligations for employers.

Finally, while remote work differs from business travel, there are notable overlaps in tax implications, risk indicators, and internal control measures. Many of the considerations discussed above may similarly arise in the context of business travel, whether it occurs frequently or on an ad hoc basis. As such, the new OECD commentary can also serve as a helpful reference for developing business traveler governance frameworks, particularly with respect to internal policies, tracking and monitoring processes, compliance controls, and audit readiness measures.



## What employers should know?

When assessing the impact of the OECD’s updated commentary, it is important to review tax compliance alongside governance, operational processes, and risk management. A holistic approach helps ensure that all potential implications are addressed. Deloitte’s professionals can assist employers in understanding how the new OECD guidance may affect their organization, taking into account their specific facts and circumstances. Our support covers PE and other technical analyses, broader Canadian tax obligations beyond PE, and practical consideration for remote work and business travel policies, enabling proactive risk management and alignment with broader talent and business objectives.



## Future insights

This overview is just the beginning. Over the coming months, we will release a series of articles that take a deeper look at some of the issues outlined above, including compliance requirements, practical examples, risk considerations, and governance strategies for employers managing remote work and business travel.





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