

Introduction

On 18 November 2025, the OECD has released the long-awaited 2025 Update to the OECD Model Tax Convention on Income and on Capital (OECD MC),¹ marking one of the most substantial rounds of revisions in recent years. Although many changes are clarificatory rather than revolutionary, together they significantly refine the international tax framework that countries rely on when negotiating, interpreting, and applying bilateral tax treaties. These changes will also be incorporated into the full revised edition of the Model expected in 2026.

The 2025 Update is particularly notable for its focus on practical issues that have become increasingly relevant to multinational businesses. These include the treatment of intra-group dealings under Article 9, the relationship between transfer pricing outcomes and the allocation of business profits under Article 7, and the rapidly growing phenomenon of remote work and its implications for permanent establishment exposure. The new guidance aims to modernise the Model Convention so that it better reflects today's business realities, especially those accelerated by digitalisation and decentralised workforces.

Another highlight of the Update is the introduction of a new paragraph 6 to Article 25 on the Mutual Agreement Procedure (MAP). This addition strengthens procedural clarity and reaffirms the commitment to effective cross-border dispute resolution. Alongside this, the Commentary on Article 25 has been expanded to provide deeper insight into the implementation of MAP processes, including expectations around cooperation, timing, and interaction with domestic remedies. These developments are likely to influence both the behaviour of competent authorities and the strategic decisions of taxpayers seeking relief from double taxation.

Taken together, the revisions signal a clear direction: greater alignment between transfer pricing principles and treaty interpretation, enhanced certainty around the meaning of a fixed place of business in remote-work situations, and a more robust dispute-resolution architecture. For clients operating internationally, these updates may not immediately alter treaty outcomes, but they will shape how tax authorities interpret existing treaty language and, therefore how risks are assessed and managed.

This article provides a article-by-article overview of the key elements of the Update. We begin with the changes to Article 9 and their interaction with Article 7, before turning to the revised permanent establishment guidance for remote work, the new MAP paragraph and Commentary updates, and, finally, our conclusions for businesses navigating the evolving treaty landscape.

Article 9 (Associated Enterprises) and Related Changes to Article 7 (Business Profits)

The 2025 Update places Article 9 at the centre of a more coherent and unified treaty framework for addressing intra-group dealings. While the arm's-length principle itself remains unchanged, the revised Commentary significantly strengthens the connection between treaty interpretation and the OECD Transfer Pricing Guidelines. In practice, this means that treaty disputes involving associated enterprises will increasingly be resolved with explicit reference

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https://www.oecd.org/en/publications/the-2025-update-to-the-oecd-model-tax-convention_5798080f-en.html

to transfer-pricing concepts that were previously treated as soft-law guidance rather than interpretive authority.

One of the most meaningful developments is the clearer acknowledgement that accurate delineation of a transaction, including the identification of economically relevant characteristics and the roles, assets, and risks of each party, is integral to applying the treaty standard. This aligns Article 9 more closely with modern transfer-pricing doctrine, which moves beyond legal form and requires an assessment of what a transaction actually represents in substance. Competent authorities are therefore expected to rely more heavily on functional analyses and risk allocation reviews when determining whether profits have been understated or overstated in cross-border dealings.

The Update also provides more explicit commentary on financial transactions, signalling the OECD's intent to ensure consistency between treaty interpretation and the 2020 Transfer Pricing Guidance on Financial Transactions. This includes closer scrutiny of intra-group funding arrangements, the conditions under which a loan may be recharacterised, and the determination of arm's-length interest. As jurisdictions increasingly challenge the pricing and quantum of intra-group debt, these clarifications will likely bolster authorities' positions in audits and MAP cases.

The strengthened link between Article 9 and the Transfer Pricing Guidelines has a direct impact on Article 7. The 2025 Update reinforces the principle that profits attributable to a permanent establishment must be determined using the same analytical tools and economic principles applied to associated-enterprise transactions. In other words, the authorised OECD approach (AOA) is brought into sharper focus: a PE is treated as a functionally separate and independent enterprise, with profits attributed based on the functions performed, assets used, and risks assumed through that notional separation.

This alignment reduces the risk of inconsistent outcomes where, for instance, transfer-pricing adjustments under Article 9 could theoretically diverge from profit-attribution outcomes under Article 7. With the revised Commentary, the OECD seeks to eliminate that fragmentation by emphasising that both articles should lead to mutually coherent results. For multinational groups, this translates into a clearer expectation that transfer-pricing documentation and PE profit analyses must "*speak the same language*", supported by compatible functional analyses and economic rationales.

From a practical standpoint, taxpayers should anticipate a more integrated audit approach from tax authorities. The changes invite closer coordination between transfer-pricing specialists and treaty-interpretation units within administrations, increasing the importance of documentation that is both technically robust and consistent across Article 9 and Article 7 positions. For businesses operating through both subsidiaries and PEs, this will elevate the need for aligned governance over intercompany policies, risk frameworks, and the internal allocation of decision-making authority.

Fixed Place of Business in Remote Work

The 2025 Update introduces some of the most anticipated clarifications on how remote work affects the creation of a permanent establishment (PE). As remote and hybrid work models have become entrenched across industries, tax authorities have faced increasing uncertainty about when an employee's home office should be considered a "*fixed place of business*" under

Article 5 OECD MC. The updated Commentary seeks to provide a more balanced and practical approach, with a clear emphasis on factual analysis over formalistic criteria.

1. Home offices rarely create a PE — but not never.

The Commentary reiterates that an employee's home office will not ordinarily constitute a PE. The decisive factor is still whether the enterprise requires the employee to work from home in a way that makes that location effectively at the disposal of the enterprise. The Update clarifies this concept by distinguishing between situations where home working is optional or merely convenient for the employee, and those where the enterprise imposes or expects it as part of its business model.

Where an employer provides suitable office space, or where the employee is free to work elsewhere, the home office generally lacks the degree of disposal needed to create a PE. Conversely, if homeworking becomes a structural element of the business, for example because the enterprise has no local premises and systematically relies on employees' homes for core operations, therefore the risk of a PE increases.

2. Regularity and business relevance remain key considerations

The revisions highlight that occasional or sporadic work from home does not meet the threshold of a fixed place of business. There must be a sufficient degree of permanence and a clear link between the work performed at the location and the enterprise's core business activities.

Importantly, the Commentary now provides more illustrations that differentiate auxiliary or preparatory activities (which do not create a PE) from substantive functions that are central to revenue generation or decision-making. This is especially relevant for decentralised teams where employees may perform high-value functions from their residences.

3. Digital infrastructure does not automatically create a PE

Given the growth of digital platforms, the OECD expressly notes that the mere availability of digital tools, servers outside the jurisdiction, or the use of online communication systems does not change the analysis of a home office. The focus remains on physical location and control, not technological capability.

This clarification helps prevent an overly expansive interpretation of PE rules merely because remote workers can perform significant tasks without physical office support.

4. Implications for employers

The practical effect of the updated Commentary is twofold. First, employers should carefully document the reasons employees work from home and demonstrate that home working is optional or employee-driven where that is the case. Second, organisations relying heavily on remote teams, especially companies that are not maintaining local offices, should assess whether the pattern of work could be interpreted as creating a fixed place of business. Internal

policies, the structure of employment contracts, and the availability of office facilities may all play a role in managing this risk.

Overall, the updated guidance modernises the PE rules without fundamentally shifting the underlying principles. It acknowledges the reality of remote work while maintaining a balanced threshold that prevents accidental PEs, but still captures cases where a business effectively “operates” from an employee’s home.

New Article 25(6) and Updates to the Commentary on the Mutual Agreement Procedure (MAP)

The 2025 Update introduces a new paragraph 6 to Article 25, representing a meaningful evolution in the OECD’s approach to dispute resolution. While the text stops short of introducing full mandatory arbitration into the Model Convention, it provides clearer expectations for how competent authorities should interact, exchange information, and move MAP cases forward. This addition strengthens the procedural backbone of MAP and seeks to address the increasing volume and complexity of cross-border tax disputes.

1. Purpose and Scope of the New Paragraph 6

Article 25(6) is designed to formalise, in treaty text, a number of procedural principles that historically appeared only in Commentary or in the OECD’s separate MAP guidance. The provision acts as an operational “*anchor*”, signalling that MAP is not merely a discretionary tool but a structured and cooperative process.

While not imposing strict deadlines, paragraph 6 emphasises timeliness, transparency, and the duty of both competent authorities to engage constructively. It also reinforces the expectation that MAP should aim to eliminate double taxation rather than merely minimise it, thereby ensuring that treaty benefits are effectively realised.

2. Reinforcement of Cooperative Behaviour

A consistent theme of the revised Commentary is the expectation that competent authorities must work collaboratively. The new language encourages an open exchange of information, proactive communication, and iterative discussion as cases evolve.

This is particularly relevant in complex transfer pricing disputes, where the factual record develops over time and where unilateral adjustments by one jurisdiction can have cascading effects. The Commentary clarifies that competent authorities should not remain passive or adversarial but should instead make genuine efforts to reach agreement, even when domestic legislation or administrative practice might point toward unilateral outcomes.

3. Interaction with Domestic Remedies

Another important clarification concerns the interaction between MAP and domestic appeal procedures. The Commentary reiterates that access to MAP must not be denied simply because a taxpayer has initiated domestic litigation, unless the treaty specifically restricts parallel avenues.

It reinforces the principle that a taxpayer’s decision to continue, suspend, or abandon domestic

remedies should not prejudice their ability to seek MAP resolution. Competent authorities are urged to provide clear guidance to taxpayers on how domestic and MAP procedures interact, reducing the common uncertainty around timelines, required documentation, and the consequences of withdrawing domestic appeals.

4. Greater Transparency and Expectations for Taxpayers

The updated Commentary also increases the expectations placed on taxpayers. It stresses that access to MAP requires timely, complete, and well-substantiated requests. Taxpayers are expected to provide not only factual information but also a clear explanation of why they believe taxation has not conformed to the Convention.

At the same time, competent authorities are encouraged to communicate clearly with taxpayers about the status of their cases and to share procedural expectations early in the process. This aims to improve both the quality of submissions and the predictability of outcomes.

5. Implications for Multinationals

For multinational enterprises, the enhancement of Article 25 signals a more structured and cooperative MAP environment. Taxpayers can expect more predictable engagement from competent authorities, and in many cases a faster path to resolution.

However, the strengthened expectations around documentation and early engagement also mean that MAP requests must be more strategically prepared. Businesses should ensure that transfer pricing files, intercompany agreements, and factual evidence are aligned before MAP is initiated.

Overall, the new paragraph 6 and the expanded Commentary signal a modernised dispute-resolution framework. One that supports the OECD's broader objective of reducing the risk of double taxation in an increasingly interconnected and compliance-heavy global tax landscape.

Conclusion

The 2025 Update to the OECD Model Convention signals a more modern and coordinated approach to cross-border taxation. With clearer expectations on transfer pricing outcomes, refined guidance on remote-work permanent establishments, and a strengthened MAP framework, tax authorities now have a more consistent roadmap for applying long-standing treaty principles to contemporary business models.

For multinational groups, the practical effect is a shift toward tighter alignment between operational substance and tax outcomes and increased scrutiny where the two diverge. The updates will also influence how existing treaties are interpreted, even before countries formally adopt the new wording.

Companies should review their current structures, transfer pricing policies, remote-work arrangements, and dispute-resolution strategies to ensure they remain fit for purpose in this evolving environment. Our team is ready to assist with assessing potential impacts and identifying opportunities to enhance certainty and reduce risk.

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