

Home office, telework and the OECD update of 2025

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Telework has created a further category of risk. An employee of a Swiss company who works from his home in Italy for part of the week may create a fixed place of business of his employer in Italy if the home office is at the employer's disposal. The OECD addressed this question in the 2025 update to the Commentary on Article 5 of the Model Convention, approved on 19 November 2025. Under the new guidance, a home office from which an individual works for less than 50 per cent of his total working time over any twelve-month period will generally not be a place of business of the enterprise. Above that threshold, the question depends on whether there is a commercial reason for the activity to be carried on in the other state, such as the need to meet customers or suppliers there. Employee convenience, the retention of staff and savings on office costs do not count as commercial reasons.¹

The Commentary is an aid to interpretation of treaties that follow the Model, and both states may take it into account in applying Article 5 of the convention of 1976. It does not bind the Italian tax administration or the courts, and several states have expressed reservations or observations on the update, so that a taxpayer should not rely on the Commentary alone.² For cross-border commuters, Switzerland and Italy have concluded mutual agreements on telework from 2020 onwards, which allow a limited share of the working time to be performed from home in Italy without changing the allocation of the taxing right on the salary. Chapter H.I describes these arrangements and the permanent rule of the frontier workers agreement. They concern the taxation of the employee and do not decide whether the employer has a permanent establishment in Italy, so that a Lugano employer whose Italian-resident employees work mainly from home still needs to assess its own position.³

For the practitioner. Indicators that an Italian tax auditor will look for when examining a Lugano company with an Italian connection: - residence

of the board members and of the persons who actually take the decisions; - place where board meetings are held and minutes drafted, including video conferences; - signatures on contracts and the location of the persons who negotiate them; - e-mail traffic, telephone records and travel patterns of the managers; - employees in Italy, their functions and the share of their time worked from home; - premises, stock, servers and bank accounts in Italy; - the relationship between the Swiss company's margin and its functions in Lugano.

1 Notes

1. EY Switzerland, "OECD 2025 Update: New Rules on Permanent Establishment for Remote Work", tax alert, 19 December 2025, https://www.ey.com/en_ch/technical/tax-alerts/oecd-2025-update-new-rules-on-permanent-establishment-for-remote-work (update released 19 November 2025; 50 per cent threshold over twelve months; commercial reason test). ↩
2. EY (above) (several jurisdictions have expressed reservations, so that reliance on the Commentary alone is not recommended). ↩
3. ESTV, "Italia" (above), list of mutual agreements on telework (28 November 2023, updated 28 April 2025, for 2024 and 2025; 22 December 2022; 2020). ↩

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