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Re: Comment Letter on the Public Consultation Document: Global Mobility of Individuals

The National Foreign Trade Council (the “NFTC”) is pleased to provide written comments on the *Public Consultation Document: Global Mobility of Individuals* (the “Consultation”).

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the OECD and the Inclusive Framework in establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations. A list of the companies comprising the NFTC’s Board of Directors is attached as an Appendix and available on the [NFTC website](#).

General Comments

NFTC welcomes the opportunity to comment on the OECD’s consultation on the global mobility of individuals. This consultation is timely given the increasing prevalence of cross-border remote working arrangements and the potential tax uncertainty that could result from such arrangements. As cross-border and remote working become increasingly common, targeted and practical clarifications or adjustments to existing rules could help reduce unnecessary compliance burdens while promoting consistent and fair outcomes for businesses and improving employee opportunities and wellbeing.

Below please find specific comments on the questions provided in the box following paragraph 29 of the Consultation.

Specific Comments

Data and trends: overview (1a)

The COVID-19 pandemic demonstrated that remote working, including cross-border remote working arrangements, can be technologically practicable and highly effective for both employers and employees. Since then, employers have experienced a marked increase in employee requests for temporary or longer-term cross-border working arrangements. Employees value flexibility for a range of professional and personal reasons, and employers increasingly rely on flexible working policies as a competitive tool

for recruitment and retention. However, tax frameworks governing mobile workforces have not evolved at the same pace as technological and organizational change, resulting in uncertainty and administrative burden for both employers and employees.

Impact on employee opportunities and wellbeing (1c)

Remote and cross-border working arrangements enable companies to access talent in new jurisdictions. They also support employee wellbeing, where employees may require temporary cross-border working arrangements to manage personal or family circumstances. Existing tax and compliance frameworks lack sufficient flexibility to accommodate such short-term needs without triggering the potential for disproportionate tax consequences or compliance obligations. This is recognized to some extent in the 2025 updates to the commentary to Article 5(1) of the OECD Model Tax Convention at paragraph 44.8, which provides that in the case of the use by an individual of that individual's home or other relevant place to carry out activities related to the business of an enterprise, that home or relevant place would generally not be considered a place of business of the enterprise if the individual worked from that home or relevant place for less than 50 percent of their total working time for that enterprise over the course of any twelve-month period. NFTC supports that principle and believes it should be further extended and refined outside of the permanent establishment context.

NFTC recommends that temporary exemptions or limited allowances are introduced for clearly defined personal or family-related circumstances, allowing short-term cross-border work up to 180 days per year without adverse consequences.

Differences across regions and economies (1d)

While some regional frameworks seek to promote labor mobility, such as the EU Freedom of Services principle, overlapping domestic laws and bilateral tax treaties frequently produce divergent outcomes for similar fact patterns. Differences in tax residence tests and income imputation approaches create uncertainty and complexity for globally mobile individuals and their employers.

NFTC urges the OECD to provide consistent baseline flexibilities across jurisdictions to provide clarity, predictability, and a minimum level of mobility.

Corporate income tax: permanent establishment risks (3a)

The definition and interpretation of preparatory or auxiliary activities that may be undertaken by, or on behalf of, an enterprise without giving rise to a taxable presence or permanent establishment vary significantly across jurisdictions and depend heavily on local practice. In some jurisdictions, the mere presence of an employee may immediately create a taxable presence. This can occur, for example, where intercompany service agreements exist, even if the employee's activities would otherwise be considered preparatory or auxiliary. Such uncertainty forces companies to design complex arrangements to manage permanent establishment risk, including duplicative management structures or in-country approval requirements that add cost without improving tax compliance. NFTC welcomes the 2025 updates to the commentary to Article 5(1) of the OECD Model Tax Convention addressing remote work and home offices and is continuing to evaluate those changes, but believes that more can be done to provide tax certainty in this area. This uncertainty is compounded where payroll reporting, withholding, and social tax obligations are triggered independently of whether a permanent establishment exists.

These challenges arise in several common and increasingly prevalent fact patterns in modern business operations:

- i) Increasingly digital and mobile companies may consider flexible staffing models with managers and supervisors located in jurisdictions different from those of their direct reports. There is a growing need for clear guidance confirming that having employees in one jurisdiction reporting to a manager in another should not give rise to a permanent establishment in the

jurisdiction of the manager, provided there are no other factors indicating a taxable presence. Greater clarity would allow organizations to optimize management structures by placing the most qualified leaders regardless of geographic location, without creating unintended tax risk.

ii) Business operations may also be disrupted when employees are unable to approve or sign contracts because of tax considerations arising from temporary presence in another jurisdiction, such as while on vacation or attending unrelated business meetings. The business community would welcome the inclusion of mobile contracting as a topic in the work on global mobility tax issues, with guidance confirming that the mere approval or signing of a contract by an employee temporarily present in another country for unrelated purposes should not, by itself, constitute grounds for establishing a taxable presence.

iii) The concept of “stuck employees” gained prominence during the COVID-19 pandemic, when many jurisdictions provided temporary relief for employees unable to return to their primary work locations. While the pandemic has passed, similar situations continue to arise due to medical emergencies, severe weather events, or unexpected changes in immigration or travel rules. The business community would benefit from pragmatic guidance limiting the application of corporate tax principles during periods where employees are temporarily present in a jurisdiction due to unforeseen circumstances beyond their control. An additional safe harbor would be helpful to allow companies time to determine the appropriate response, recognizing that these situations are not tax-driven and often require cross-functional coordination.

iv) In some cases, multiple employees may be working remotely from the same jurisdiction on a temporary basis, even where each individual’s facts and circumstances would not, on their own, give rise to a permanent establishment. Certain jurisdictions may receive a higher volume of remote work requests due to factors such as the prevalence of second or vacation homes or the availability of simplified immigration pathways, including digital nomad visas. Where multiple employees are working remotely from their homes in a single country, the business community would benefit from clarity or assurance that, absent a specific connected business or commercial purpose in that jurisdiction, the mere presence of multiple individuals should not, in and of itself, trigger a permanent establishment.

NFTC recommends:

- i) A consistent definition of preparatory or auxiliary activities that do not create a permanent establishment across jurisdictions;**
- ii) A time-based safe harbor across all permanent establishment types where activities remain preparatory or auxiliary;**
- iii) Greater flexibility for cross-border manager and employee role functions where decision-making authority is limited or oversight-based;**
- iv) Aligning employer payroll obligations, including reporting, withholding, and social taxes, with the permanent establishment standard, such that where global mobility does not result in the creation of a permanent establishment, the employer is not subject to payroll reporting or withholding obligations in the host jurisdiction;**
- v) Clarifying that temporary remote work within the same jurisdiction should not be aggregated across employees for determining permanent establishment risk; and**
- vi) Confirming that cross-border reporting lines (employees reporting to managers in other jurisdictions) do not, by themselves, create a permanent establishment.**

Profit attribution and transfer pricing challenges (3b&c)

Frequent movement of senior executives, board members, and key personnel may complicate the application of the OECD Transfer Pricing Guidelines, particularly in relation to intercompany services and profit attribution. These challenges are exacerbated by inconsistent interpretation and application of the Authorised OECD Approach across jurisdictions.

NFTC recommends:

- i) Safe-harbor thresholds based on time, activity type, and regularity so that full transfer pricing analyses and intercompany charges are not required for immaterial cross-border activities or permitted oversight functions;**
- ii) Greater consistency in the application of the Authorised OECD Approach among OECD members, particularly in cases involving globally mobile individuals; and**
- iii) Clarifying that temporary remote work within the same jurisdiction should not be aggregated across employees for transfer pricing or intercompany service purposes, consistent with the principle that no PE is created by incidental or temporary activity within a single jurisdiction.**

Materiality and impact on business operations (3d)

Companies incur significant costs to develop and maintain internal processes to manage permanent establishment risk, including senior-level case reviews and investment in specialized tracking systems, even for short-term or low-risk arrangements. As workforce size increases, the volume and complexity of cases grow disproportionately. NFTC welcomes the 2025 updates to the commentary to Article 5(1) of the OECD Model Tax Convention addressing remote work and home offices and is continuing to evaluate those changes, but believes that more can be done to provide tax certainty in this area.

NFTC urges the OECD to rationalize and clarify the permanent establishment standard, which would significantly benefit both businesses and employees by reducing the risks associated with global mobility decisions.

Conclusion

NFTC members strongly support efforts to ensure that international tax frameworks reflect modern and flexible working arrangements. Clear, practical, and consistent rules will allow businesses to remain competitive in a global capacity while maintaining tax certainty and compliance. We appreciate the OECD's efforts on this issue and thank you for the opportunity to comment.

We are happy to answer any questions or clarify any of the comments raised and can be reached at: tsmith@nftc.org.

Sincerely,

A handwritten signature in black ink that reads "Tiffany Smith". The signature is written in a cursive, flowing style with a large, stylized 'T' and 'S'.

Appendix: NFTC Board of Directors

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