



 **Reina Sofía Museum**



**European
Region Conference**
Madrid-Spain

11-13 March, 2026

Emerging trends in
international taxation:
Europe and its global
connections

Tax and Social Security Challenges in Crossed Border Mobility: Commuting, International Secondment and Working from Home

Wednesday 11 March 2026

17.30-19.00

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2026

Chair



Guglielmo Maisto
ITALY

Panelists



Giorgia Maffini
UK



Joao Felix Pinto Nogueira
PORTUGAL



David Vilches
SPAIN



Frank Pötgens
THE NETHERLANDS



Katerina Perrou
GREECE



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Agenda



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- I. Introduction
- II. Statistics on Mobility
- III. Domestic Privileged Regimes for Crossborder Mobility
- IV. Home Office
- V. Secondment



I. Introduction





I. Introduction

Frontier Workers

Seconded
Employees

Workers from
Home
(Home Office)

Nomads

Private Equity
Executives /
Keymen HNWI's



II. Statistics on Mobility





II. Statistics on Mobility

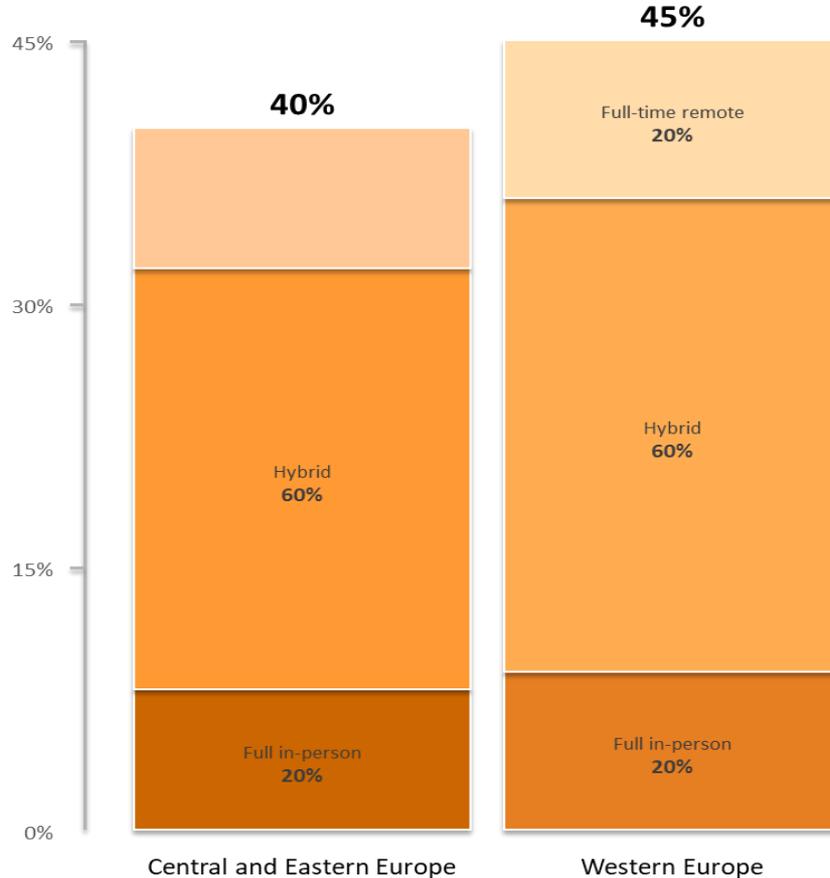
Results from a Global Survey

- Covering 50 countries, 90% of global GDP
- March 2024 – well out of the pandemic
- 56,000 respondents
- Respondents are all employees and all working (full or part-time)

II. Statistics on Mobility



Can your job be done remotely?

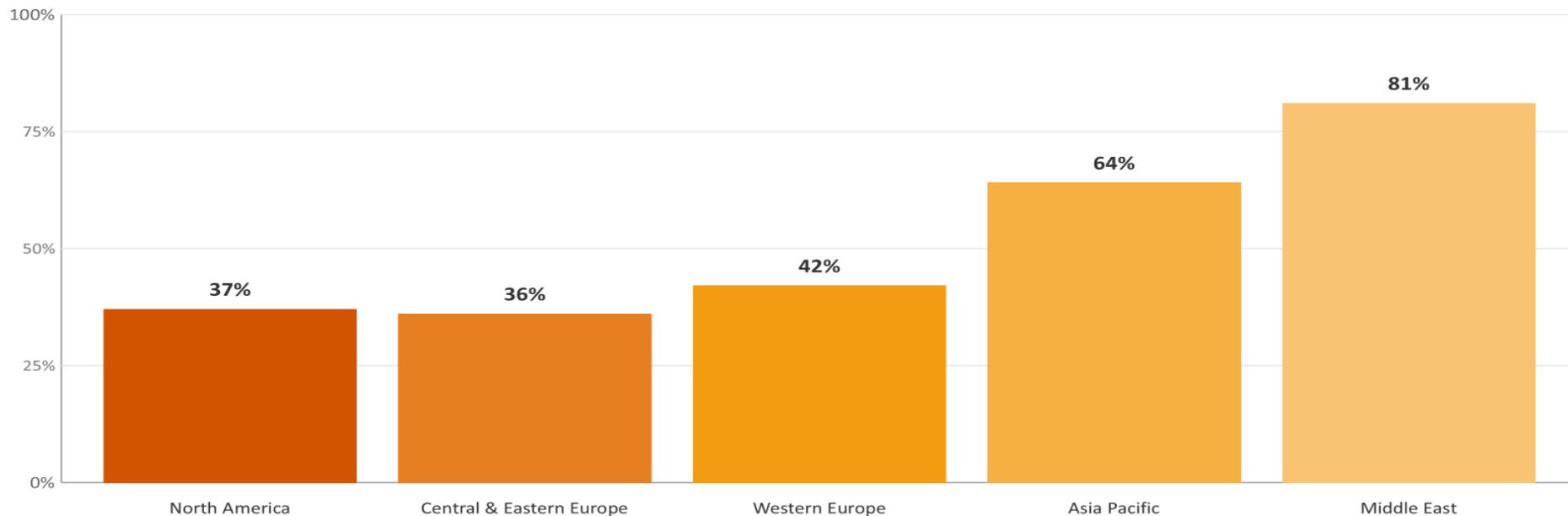


II. Statistics on Mobility



In the past 12 months, have you worked remotely from another country?

Pls consider only full working days and not one-off tasks that may have been performed while on vacation.





III. Domestic Privileged Regimes for Crossborder Mobility



Domestic Tax Law Regimes

Frontier Workers	Seconded Employees	Workers from Home (Home Office)	Digital Nomads	Private equity executives / Keymen HNWI's
<ul style="list-style-type: none"> ○ Residence-State Taxation as the Prevailing Principle ○ Domestic Tax Relief Mechanisms <ul style="list-style-type: none"> ○ Simplified tax return filings. ○ Framework enabling cross-border teleworking 	<ul style="list-style-type: none"> ○ The 183-Day Rule as the Common Threshold for Host-State Taxation <ul style="list-style-type: none"> ○ Once seconded employee becomes a tax residence impatriate regime may apply ○ In parallel, jurisdictions provide specialized tax regimes for expatriates 	<ul style="list-style-type: none"> ○ No special regimes ○ Primary Focus: Acquisition Of Tax Residence. <ul style="list-style-type: none"> ○ No tax residence in the host State remains subject to the provisions of the applicable DTT. ○ Tax residence in the host State, liable to PIT on a worldwide basis. ○ The Existence of a PE is the Main Concern Across Jurisdiction. A Factual-base Decision. 	<ul style="list-style-type: none"> ○ Most jurisdictions do not provide a specific tax regime ○ Exceptions: <ul style="list-style-type: none"> ○ An exemption on employment income for inbound workers is applied (Italy – Greece) ○ The digital nomad is treated as a privileged case for qualification under the special impatriate regime. (Spain, Italy – flat tax –) 	<ul style="list-style-type: none"> ○ Domestic Tax Regimes For Attracting Residence ○ Incentives Structured Around Two Main Alternatives: <ul style="list-style-type: none"> ○ Special regimes: impatriate; flat-tax; lump-up (Italy, Greece, Portugal) ○ Specific taxation of income (carried interest) ○ Neutralization of PE risk: managers of funds are not PE



Do Domestic Privileged Regimes Create Crossborder Tax (Treaty) Issues?





Do Domestic Privileged Regimes Create Crossborder Tax (Treaty) Issues?

NL: Expat regulation (30% of salary is a tax-exempt allowance/salary capped at EUR 262,000); grandfathering until 1 January 2027; option to be treated as non-resident taxpayer for Box 2 (income from a substantial interest) Box 3 (income from savings and investments); not fully liable to tax; impact on tax residency (SC BNB 2010/118)





IV. Home Office





IV. Home Office

2025 update to the OECD Commentary

- As of 18 November 2025; new section "Cross-border working from home or other relevant place" (para. 44.1-44.21 of Commentary on Article 5 OECD Model)
- Key issue: is whether the home office is at the disposal of the foreign enterprise/employer?
- Para. 18 and 19 of the 2017 Commentary are deleted



IV. Home Office

2025 update to the OECD Commentary

- "Home or other relevant place"; employee's home, [other relevant place] a second home, a holiday rental or another form of private housing
- Characteristic is that it is not otherwise directly or indirectly connected with the enterprise/employer, and primarily belongs to the private sphere of the employee
- 2025 Commentary (including practical rules) is irrelevant for locations that are connected with the enterprise/employer



IV. Home Office

2025 update to the OECD Commentary

- Assessment disposal requirement based on two central factors:
 - (i) the intensity of the use of the location for activities on behalf of the foreign enterprise, whereby a 50% time threshold is applied (the quantitative use test); and
 - (i) the existence of a commercial reason for the performance of these activities by the employee in his state of residence and employment (the qualitative motive test).



IV. Home Office

2025 update to the OECD Commentary

- Is 50% time threshold a safe harbour (?); examples and para. 44.10
- If 50% time threshold exceeded, then determine whether there are commercial reasons for activities employee in that State → cumulatively meeting the following conditions:
 - (i) the enterprise has a reason to have an employee physically present in that State for the exercise of its activities; and
 - (i) the use of the home or other relevant place facilitates those business activities,



Are the 2025 Revisions to the OECD Commentary on Home Office Conclusive?





IV. Home Office

Facts and circumstances control:

- 44.3-44.6 determining “**disposal**”
- 44.6 existence of “**commercial reason**”
- 44.19 non-existence of “**commercial reason**”
- Examples C,D,E
- **Less than 50% working does not exclude home office PE**



Do the 2025 Revisions to the OECD Commentary on Home Office apply retrospectively?





IV. Home Office

- Clarifications vs. modifications
- Application to earlier treaties?
- **No** application to earlier treaties if new commentaries are found **not** to reflect treaty wording?



Do Revenue Agencies Follow the 2025 Updates?



IV. Home Office



YES	V
NO	V
PARTIALLY	V
MAYBE	V



How is the >50% Working Time Threshold Determined?





IV. Home Office

- Is the rule the same for senior management?
- Dual contracts (**foreign**) and domestic (**employers**)
- Does working time include work for a second (**another**) domestic employer?



Does the Home Office PE Exclusion apply also to Agency PE?





IV. Home Office

- New commentary includes article 5(1)
- Should agency PE be included?
- Does HO PE commentary apply to Article 5 (3)?
- Does HO Pe commentary affect art. 14 OECD MC (2000)?



Does the Home Office PE Exclusion apply to several Home Offices in the Source State?



IV. Home Office



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- Facts and circumstances control



May Home Office Set-ups Trigger Tax Residence?

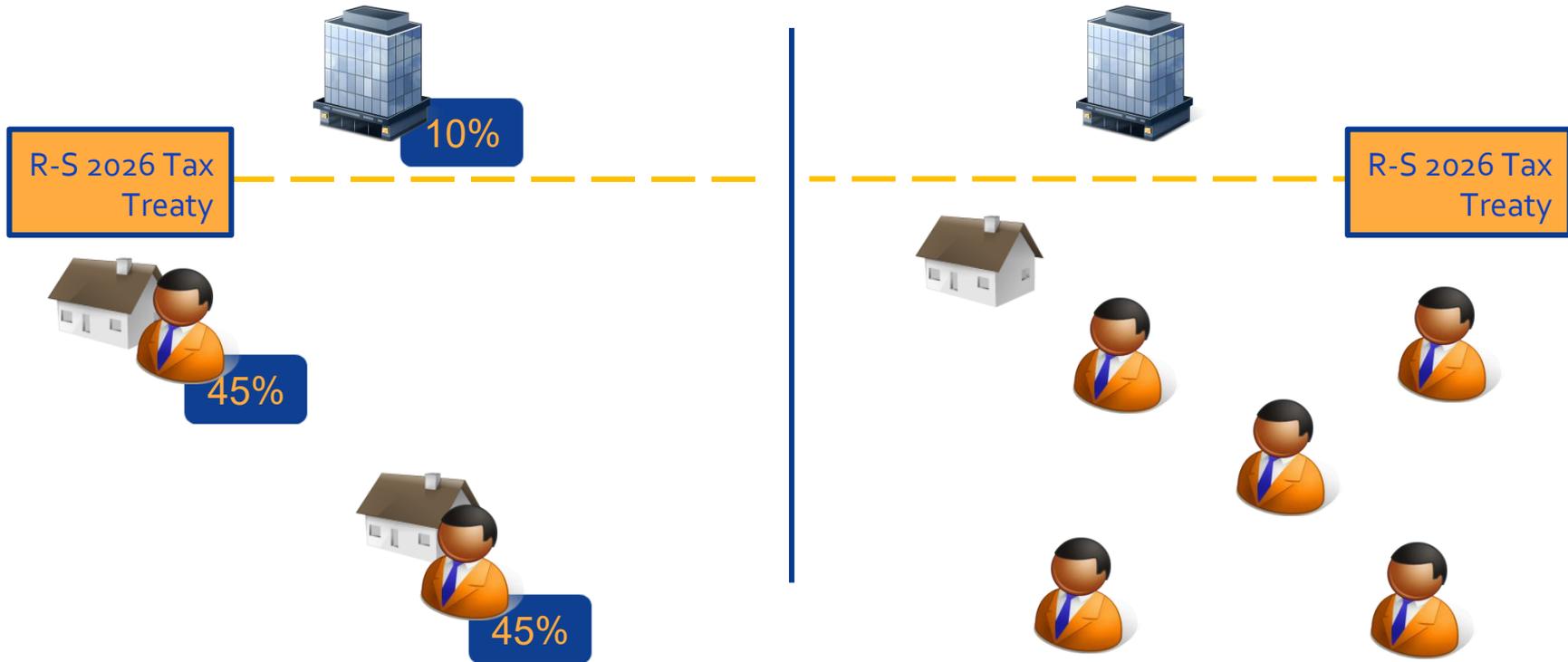




IV. Home Office

- Is “place of management” (Art. 5(2)(a) OECD Model Convention) excluded from the OECD new guidance?
- Corporate tax residence:
 - Past:** i) limited domestic criteria; ii) PoEM as the tie-breaker
 - Now:** i) expansion of domestic criteria; ii) MAP as the tie-breaker
- **Examples of legislative, judicial and tax authority’s practice expansion of domestic criteria in Europe:**
 - Legislative:** ordinary management; real management; business centre; “current activities are conducted in an organised and continuous manner”, “other circumstances related to the organisation and business of the company;
 - Judicial and tax authority’s practice:** signature power, celebration contracts, residency directors, place of activity, etc.

IV. Home Office and Residence





Do Home Office Set-ups Trigger Social Security Liability?

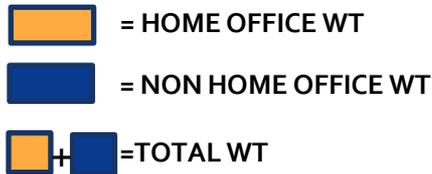


IV. Home Office

Social Security – Activities in two or more MS

Regulation (EC) 883/2004 - Regulation (EC) 987/2009

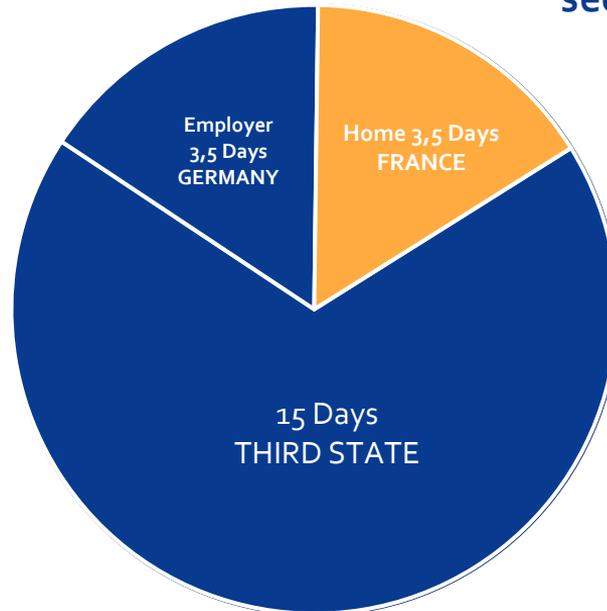
- Home Office $\leq 25\%$ working time



Rejected
by ECJ

~~CASE I~~

~~Third state WT Excluded
Home Office > 25%
FRANCE~~



Employer's social
security law applies

~~Home Office
working time
> 25%
Home office
working time~~

Home Office? Working
time $\leq 25\%$

CASE II

Third state WT Included
Home Office < 25%
GERMANY

IV. Home Office

Social Security – Activities in two or more MS and Telework agreement(s)

• Home Office <25% working time  Employer's social security law applies

• Telework* ≤ 49,9% working time  Employer's social security law applies



[Home office performed through information and communication technology (ITC): desktops, laptops, tablets, smartphones, etc.]

*Framework Agreement on the application of Art. 16 (1) EC Reg. 883/2004, optional regime to be agreed bilaterally by MS

IV. Home Office

Social Security vs Tax Treaty (2025 Commentary Update)

Work time from home	Social Security	Tax Treaty
< 25%	Employer's state	No PE (under conditions)
25%-49,9%	Employer's state	No PE (under conditions)
>49,9%	Employee's state	PE if >50% A → commercial reason



How to determine Home Office PE?





IV. Home Office

Income Attribution to PE

Baseline issue: Profit attribution to PE already challenging even without labour mobility

Why labour mobility makes it worse

- Labour mobility = mobility of **functions** through (full/partial) relocation of key decision-makers
- Increased uncertainty: where **value** is created, who controls **risk**, and anchoring of **assets**

AOA / OECD guidance becomes harder to apply

- Employees perform strategic roles in multiple locations (blurred substance)
- Functions are split across countries (no clear single “place” of activity)
- Cost allocation complexity rises - Increased difficulty allocating: *Employee benefits, Expatriation allowances, Intercompany charges*



Have Member Countries Concluded CA Agreements?





Which Action could the EU Institutions Take?





Would it be desirable to revise Article 5 OECD MC?





IV. Home Office

Possible alternative provision on Article 5 OECD Model Convention :

"Notwithstanding the preceding provisions of this Article but subject to the provisions of paragraph 5, an enterprise of a Contracting State shall not be deemed to have a "permanent establishment" in respect of activities carried on in the other Contracting State by an employed (or self-employed) individual working for the enterprise less than 50 per cent of his working time or being physically present for less than 90 days in the fiscal year concerned from a primary or secondary home situated in the other Contracting State provided that (i) the enterprise does not conduct any other activities or business in such other State; or that (ii) any other activities or business carried on by the enterprise or by closely related enterprises in such other State do not constitute complementary functions to the activities carried on by the individual forming part of a cohesive business operation."



Does Home Office PE Characterization Impact on Revenue Allocation between Residence and Source States?





V. Secondment





V. Secondment

Issues

- Residence state taxation if the 3 conditions of Art. 15(2) are cumulatively met:
 - a. presence in the work state < 183 days during a reference period
 - b. the remuneration is paid by, or on behalf of an employer who is not residing in the work state
 - c. the remuneration is not borne by a PE which the employer has in the work state
- If one conditions is not fulfilled, then attribution of taxation right to the work state.



V. Secondment

Issues

- Art. 15(2)(b) (an employer not residing in the work state)
- “An” employer may be either formal and or facto employer
- Para. 8.13 of the Commentary on Art. 15; the integration of the employee’s activities into those of the business of the company to which he or she is seconded is a pre-selection
- Objective criteria of para. 8. 14 should confirm the result

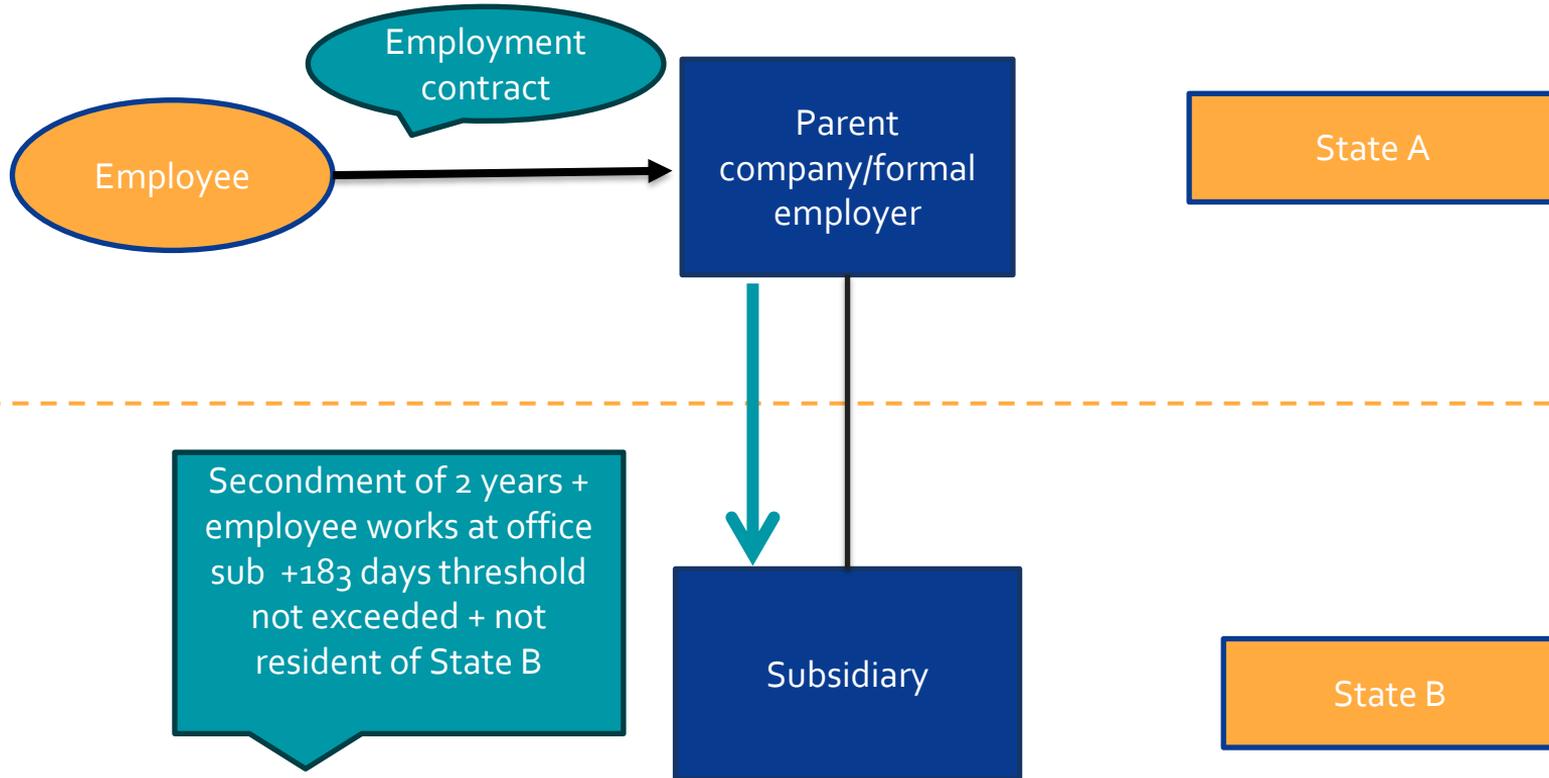


V. Secondment

Objective criteria :

1. authority to instruct the individual
2. control and responsibility for the place of work
3. the remuneration of the individual directly charged by the formal employer to the enterprise to which the services are provided
4. Determination of number and qualifications of the individuals
5. right to select the individual who will perform the work
6. Right to terminate contractual arrangement
7. right to impose disciplinary sanctions
8. determination of holidays and work schedule

Secondment case





Is there a Difference between Secondment and Service PE?





Does the 2025 Update Revisit Secondment?





V. Secondment

VAT taxable transaction (ECJ: 11 March, 2020 Case C- 94/19):

"[31]... Article 2, point 1, of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as precluding national legislation under which the lending or secondment of staff of a parent company to its subsidiary, carried out in return for only the reimbursement of the related costs, is irrelevant for the purposes of VAT, provided that the amounts paid by the subsidiary to the parent company, on the one hand, and that lending or secondment, on the other, are interdependent."

No VAT taxable transaction if the alleged activities of the seconded employee is included in the PE:

Judgment 13 June, 2024 C-533/22 (paragraphs 77-78)

AG Conclusion (paragraphs 35-36)



Thank you!

