

# PE Risk Decision Tree

A practical framework for assessing Permanent Establishment exposure when employees work across borders. Built for HR, finance, and global mobility teams.

## Why this framework exists

The 183-day rule is not a universal safe harbour. Permanent establishment (PE) can be triggered in as few as 30 days under certain bilateral tax treaties, and dependent agent PE has no day threshold at all. The OECD's November 2025 update to the Model Tax Convention introduced a new two-part framework for fixed place of business PE, but left dependent agent PE untouched. Companies need a structured way to assess both risks before approving any cross-border work arrangement.

## How to use this document

**Section 1** walks through seven screening questions in sequence. Work through them top to bottom for each employee request to work abroad. The questions are designed to surface both fixed place of business PE risk and dependent agent PE risk.

**Section 2** provides country-specific treaty variations for 20 jurisdictions. Use it to check which treaty model (OECD or UN) governs your specific corridor, and what service PE thresholds apply.

**Section 3** is a risk-scoring matrix. Assign points based on the employee's role, activities, duration, and treaty context. The total score maps to a risk band (Low, Medium, High, Critical) with recommended actions for each.

Two Types of PE Risk		
<b>Fixed Place of Business PE Article 5(1)</b>	Triggered by a physical location (including a home office) with sufficient permanence through which the enterprise's business is carried on. The 2025 OECD update introduced a 50% working time benchmark and a commercial reason test.	Time + location + business activity
<b>Dependent Agent PE Article 5(5)</b>	Triggered when a person acting on behalf of the enterprise habitually concludes contracts or plays the principal role in contract conclusion. No day threshold. No safe harbour. The 2025 OECD update did not revise this test.	Person + contract authority + habit

## Section 1: The Seven-Question PE Screening Test

Work through these questions in order for each cross-border work request. A single "yes" at Steps 1 or 2 may be sufficient to require specialist tax advice.

### 1 Is the employee a director, officer, or founder of the company?

**If yes:** Elevated risk under both PE types. Founders and key executives face heightened scrutiny. If this person is the primary individual conducting the enterprise's business, their foreign location is likely to be treated as the company's place of business. Seek specialist advice before approving.

**If no:** Proceed to Question 2.

### 2 Does the employee have authority to conclude contracts on behalf of the company?

**If yes:** Dependent agent PE risk is high regardless of how many days they spend abroad. This is the most commonly overlooked trigger. Restrict contract-signing authority before travel, or centralise contract execution in your home jurisdiction.

**If no:** Dependent agent PE risk is low. Proceed to Question 3 to assess fixed place of business risk.

### 3 Will the employee spend 50% or more of their working time in the foreign location over any 12-month period?

**If yes:** Above the OECD's 2025 safe harbour threshold. Fixed place of business PE risk increases. Proceed to Question 4.

**If no:** Below the 50% benchmark. Fixed place of business PE risk is generally low under the 2025 OECD framework. Still check the applicable treaty (Question 6), as some jurisdictions apply their own thresholds.

### 4 Is there a commercial reason for the employee's presence in that country?

**If yes:** PE risk is materially elevated. Commercial reasons include: serving local clients, accessing regional markets, providing on-site services, or interacting with local suppliers and stakeholders.

**If no:** If presence is driven solely by personal preference, talent retention, or generic cost savings (with no business-driven need to be in that jurisdiction), fixed place of business PE is unlikely. Document the personal nature of the arrangement.

### 5 Does the employee have a local mailing address, co-working membership, or long-term rental in the foreign country?

**If yes:** Physical presence indicators strengthen "disposal" arguments by tax authorities. The more established the local footprint, the stronger the case that the location is at the enterprise's disposal. Document all arrangements carefully.

**If no:** Lower physical presence risk, but this factor alone is not determinative. Proceed to Question 6.

**6 Which bilateral tax treaty applies, and does it follow the OECD Model or the UN Model?**

**If yes:** UN Model treaties (common with developing nations) include a services PE provision that can trigger at 183 days or less, and some bilateral treaties set thresholds as low as 90 days. Check the specific treaty. See Section 2 for country-specific variations.

**If no:** OECD Model treaties generally have higher PE thresholds. However, some OECD-based treaties still contain unique provisions. Always verify the specific treaty text.

**7 Is the employee creating intellectual property in the foreign jurisdiction?**

**If yes:** Some countries (Germany, India, among others) treat local IP creation as a PE trigger, particularly when the IP generates revenue outside that jurisdiction. Assess whether the employee's work product constitutes protectable IP under local law.

**If no:** Lower IP-related PE risk. Compile your findings from all seven questions and score using Section 3.

## Section 2: Country-Specific Treaty Variations

The table below covers 20 commonly encountered jurisdictions. Treaty model, service PE threshold, construction PE threshold, and notable local rules are listed for each. Thresholds refer to the most common treaty position for that country; always verify the specific bilateral treaty that applies to your company's home jurisdiction.

Country	Treaty Model	Services PE Threshold	Construction PE	Notable Local Rules
<b>United Kingdom</b>	OECD	No specific services PE	12 months	HMRC scrutinises home offices; 2025 OECD commentary adopted
<b>Germany</b>	OECD	No specific services PE	12 months	Broad interpretation; IP creation abroad can trigger PE
<b>France</b>	OECD (broader)	183 days (some treaties)	12 months	Effective management test; service PE in some bilateral treaties
<b>Netherlands</b>	OECD	No specific services PE	12 months	Follows OECD closely; home office PE assessed case by case
<b>Spain</b>	OECD (broader)	183 days (some treaties)	12 months	Effective management from Spain triggers full tax residency
<b>Italy</b>	OECD	No specific services PE	12 months	Aggressive PE enforcement; fixed base concept applied broadly
<b>Ireland</b>	OECD	No specific services PE	12 months	More restrictive PE interpretation than most EU states
<b>Switzerland</b>	OECD	No specific services PE	12 months	Canton-level variations; 2025 OECD guidance adopted early
<b>India</b>	UN (modified)	90 days (unrelated); 1 to 30 days (related)	6 months	Significant Economic Presence rules; very aggressive enforcement
<b>China</b>	UN (modified)	183 days	6 months	Broad PE interpretation; local tax bureau discretion significant
<b>Singapore</b>	OECD/UN hybrid	183 days	12 months	Generally straightforward; recent expansions to PE concept
<b>Australia</b>	OECD	No specific services PE	12 months	Substance-over-form approach; ATO increasingly active on PE
<b>Japan</b>	OECD	No specific services PE	12 months	Follows OECD model closely; construction PE at 12 months
<b>Canada</b>	OECD	No specific services PE	12 months	PE managed federally; provincial taxes may still apply
<b>United States</b>	OECD (US Model)	No specific services PE	12 months	Effectively Connected Income rules; state-level nexus varies widely
<b>Brazil</b>	UN (modified)	183 days	6 months	Aggressive payroll withholding; services taxed at source in many treaties

Country	Treaty Model	Services PE Threshold	Construction PE	Notable Local Rules
Mexico	OECD/UN hybrid	183 days (some treaties)	6 months	Services PE in several bilateral treaties; 183-day threshold common
UAE	OECD	No specific services PE	6 to 12 months	Corporate tax introduced 2023; PE rules still evolving
South Africa	OECD/UN hybrid	183 days	12 months	SARS applies dynamic treaty interpretation; 2025 OECD guidance relevant
Nigeria	UN	90 to 120 days	3 months	Low thresholds; expressed reservations to 2025 OECD commentary

**Important:** This table reflects general treaty positions as of early 2026. Individual bilateral treaties may differ from the country's standard model. India, Israel, and Nigeria have expressed specific reservations to the 2025 OECD commentary. Always consult the specific treaty text and seek professional advice for your corridor.

### Section 3: PE Risk-Scoring Matrix

Assign points for each factor below based on the employee's specific situation. Total the score and map it to the risk band at the bottom of the page. This matrix is designed to be completed in under five minutes per request.

Risk Factor	Low (1 pt)	Medium (3 pts)	High (5 pts)	Score
<b>1. Seniority / Role</b>	Junior individual contributor; no client contact	Mid-level; some client interaction but no signing authority	Director, officer, founder, or anyone with contract-signing authority	_____
<b>2. Contract Authority</b>	No authority to negotiate or conclude contracts	Involved in negotiations but does not sign or finalise	Habitually concludes contracts or plays principal role in conclusion	_____
<b>3. Duration Abroad</b>	Under 30 days in any 12-month period	30 to 89 days; or below 50% of working time	90+ days; or 50%+ of working time in foreign location	_____
<b>4. Commercial Reason</b>	Purely personal reasons (lifestyle, family, preference)	Mix of personal and business reasons; occasional client contact	Clear business purpose: serving local clients, accessing local market, on-site services	_____
<b>5. Local Footprint</b>	Hotels or short-term stays; no fixed address	Co-working membership or medium-term rental (1 to 6 months)	Long-term lease, registered address, or local mailing address	_____
<b>6. Treaty Risk</b>	OECD Model treaty; no services PE clause; high thresholds	OECD/UN hybrid; services PE at 183 days	UN Model; services PE at 90 to 120 days; or no treaty in place	_____
<b>7. IP Creation</b>	No IP created or used in foreign jurisdiction	Some work product created locally but IP owned elsewhere	Core IP or revenue-generating assets created in foreign jurisdiction	_____
<b>TOTAL SCORE</b>				____ / 35

### Risk Bands and Recommended Actions

Score	Risk Level	Recommended Action
7 to 11	<b>LOW</b>	Approve with standard monitoring. Ensure day-count tracking is active. No specialist review required unless the arrangement changes.

Score	Risk Level	Recommended Action
12 to 18	MEDIUM	Approve with conditions. Restrict contract-signing authority while abroad. Set a time limit and review date. Document the personal (non-commercial) nature of the arrangement where applicable. Consider involving your tax adviser.
19 to 25	HIGH	Do not approve without specialist tax review. Assess both fixed place of business and dependent agent PE exposure. Review the specific bilateral treaty. Consider an Employer of Record structure. Brief the CFO.
26 to 35	CRITICAL	Do not approve. PE exposure is near-certain under most treaty interpretations. Engage external tax counsel immediately. If the arrangement is already in place, conduct an urgent PE remediation review. Notify the board if director-level employees are involved.

**Next steps:** For a full assessment of your work-from-anywhere policy, including treaty-specific analysis and PE remediation strategies, visit [jacksonandfrank.com/blog](https://jacksonandfrank.com/blog) or contact our cross-border tax and compliance team directly.

This framework reflects the OECD Model Tax Convention as updated in November 2025 and general treaty positions as of February 2026. It is not a substitute for professional tax advice. Individual bilateral treaties may differ from the positions outlined above. Jackson and Frank accepts no liability for decisions made on the basis of this document.