

Reduced excise fees on data, working from home & permanent establishments

The finance bill 2021 proposes to allow the purchasers of bulk data for resale to deduct excise fees paid against what the excise fees payable. This is a welcome move that the government aligns with the big four agenda that could see the price of data go down. This comes as a reprieve to those who've had the nature of their work interrupted such that they work from home. The implication is that, with the evident reduction in cost, the sellers of data to consumers will reduce their cost thus making working online and away from the office affordable both to small and large businesses.

Since the beginning of the pandemic, March of 2020, one of the government measures to curb the spread of the pandemic was geared towards having the employers reduce the number of employees working in the offices. Subsequently, this saw an increase in the cost of doing businesses where employers have to pay for the entirely unoccupied or least utilized business offices and premises.

On matters compliance, teleworking from home gives rise to the issue of taxing rights between jurisdiction should such an employee working from home be in the jurisdiction for not less than 183 days.

WORKING FROM HOME AND GLOBAL TAX POLICIES.

A person working from home on a capacity of an agent or employee gives rise the issue or resident for the purpose of determining the permanent establishment.

The OECD model, gives an appropriate guideline on the pertinent issue of working from home where an employee working in a different country and using their home as an office, they may constitute a permanent establishment if the premise is at the disposal of the enterprise and the taxing rights given to the jurisdiction that the employee is in.

THE OECD

Paragraph 18 explains that where a home office is used on a continuous basis for carrying on business activities for an enterprise and it is clear from the facts and circumstances that the enterprise has required the individual to use that location (e.g., by not providing an office to an employee in circumstances where the nature of the employment clearly requires an office), the home office may be considered to be at the disposal of the enterprise. As an example, paragraph 19 notes that where a cross-border worker performs most of their work from their home situated in one jurisdiction rather than from the office made available to them in the other jurisdiction, one should not consider that the home is at the disposal of the enterprise because the enterprise did not require that the home be used for its business activities.

TRAVEL BANS

So, what happens if the country imposes a travel ban between countries in which case the employee is not in a position to travel. If the travel ban completely renders the employee unable to work, then the jurisdiction should consider such circumstances and adjust downwards the days they have been present accordingly in the same manner as if the employee is not able to leave due to an illness and the additional days of the illness constitute the days considered to qualify for there to be a permanent establishment. If otherwise, the ban is imposed and in fact the employee continues to work for their employer, then a ban should not reduce the days considered to there to qualify for a PE.

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