



Global Tax Planning for Employer Of Record Arrangements

Navigating Permanent Establishment Risk

EORs, Global Tax Planning, and the Evolution of International Expansion

For U.S. multinationals, global tax planning and international workforce strategy are increasingly intertwined. The employer of record (EOR) model has become a popular alternative to forming a foreign subsidiary or branch at the outset of an expansion. By allowing a third-party provider to serve as the legal employer for local personnel, an EOR can significantly simplify payroll administration, benefits compliance, employment registration requirements, and labor law obligations. The arrangement often permits a U.S. business to hire talent and begin operations in a

foreign jurisdiction in a matter of weeks rather than months.

The growing popularity of EOR arrangements has, however, led to a common misconception. Many businesses assume that because the local worker is formally employed by the EOR rather than by the U.S. company, the risk of creating a [taxable presence](#) in the foreign jurisdiction is substantially reduced or eliminated. In practice, the employment analysis and the tax analysis are often addressing different questions. An EOR may solve employment-law challenges, but it does not necessarily solve permanent establishment concerns — and it does not replace the need for a broader global tax planning framework.

What Is Permanent Establishment?

For U.S. businesses expanding abroad, permanent establishment remains one of the most important international tax concepts — and a central consideration in any global tax planning analysis. The permanent establishment rules determine when a foreign jurisdiction may impose corporate income tax on a portion of the profits of a nonresident enterprise. Although standards vary among jurisdictions and treaty networks, the analysis generally focuses on whether the foreign enterprise has established a sufficient commercial presence within the jurisdiction.

The challenge presented by EOR arrangements is that they separate legal form from operational reality. The EOR may be the legal employer for labor-law purposes, but the U.S. enterprise generally directs the employee's activities, establishes objectives, evaluates performance, and receives the economic benefit of the employee's work. Consequently, tax authorities often focus less on the employment contract and more on the substance of the underlying business activities.

Two permanent establishment theories are particularly relevant in the EOR context: dependent agent permanent establishment and fixed place of business permanent establishment. In both cases, the decisive issue is often what the employee is actually doing on the ground rather than the formal structure through which the employee is engaged.

Dependent Agent Permanent Establishment: *How EOR Arrangements Create Risk*

Dependent agent permanent establishment often arises where an individual habitually acts on behalf of an enterprise and plays a principal role in securing contracts or developing commercial relationships. Contrary to a common assumption, the individual need not necessarily possess

formal authority to execute agreements. Tax authorities increasingly look beyond signature authority and examine whether the employee effectively drives the contracting process.

If a local employee negotiates key commercial terms, develops customers, secures commitments, or otherwise performs functions that lead directly to the conclusion of contracts, the absence of formal signing authority may carry limited weight. For that reason, U.S. companies frequently encounter greater risk when EOR personnel are engaged in sales, business development, account management, or local market leadership roles. The central question is whether the employee is carrying on the enterprise's business within the jurisdiction rather than merely supporting activities conducted elsewhere.

Fixed Place of Business PE and Remote Workers

A Growing Concern The fixed place of business analysis presents a different challenge — and an increasingly important dimension of global tax planning for companies entering new markets through remote or hybrid workforces. Traditionally, taxpayers associated permanent establishments with leased offices, factories, workshops, and other physical facilities. The widespread adoption of remote work has complicated that framework. Many U.S. companies now enter a foreign market with a single employee engaged through an EOR who works exclusively from a home office.

At first glance, this fact pattern appears less likely to create a fixed place permanent establishment because the company owns or leases no local property. Yet this assumption may be overly simplistic. Increasingly, tax authorities are examining whether a home office or similar workspace has effectively become a place through which the enterprise conducts its business.

As a result, the absence of leased office space is no longer the end of the analysis. Rather, it is often the starting point for a deeper inquiry

into how the enterprise operates within the jurisdiction.

When Does a Home Office Create a Permanent Establishment?

One of the most interesting tensions in modern international taxation concerns the relationship between home-office arrangements and traditional fixed-place principles. If a U.S. enterprise leases office space in a foreign jurisdiction and conducts business from that location, the existence of a place of business is relatively easy to establish. Yet if the same company chooses not to lease office space and instead relies on a long-term home-office arrangement, tax authorities may ask whether the employee's home has effectively become the enterprise's local office.

The key concept is frequently whether the location is considered to be at the disposal of the enterprise. Ownership is not required. A lease is not required. Instead, authorities generally examine the practical relationship between the enterprise and the location. If an employee works remotely solely as a matter of personal preference and alternative workspace exists, the taxpayer's position may be stronger. On the other hand, if a U.S. company enters a foreign market, has no local office available, expects an employee to work indefinitely from a particular location, and conducts meaningful business activities through that location, authorities may argue that the home office has become the de facto operating base of the enterprise.

Recent OECD commentary has also focused on the permanent establishment implications of remote work arrangements. In particular, the [OECD's 2025 Update to the OECD Model Tax Convention](#) reinforces that home-office arrangements require a fact-intensive analysis and do not automatically create a permanent establishment merely because an employee performs services remotely. Rather, the analysis continues to depend on the specific facts and circumstances, including whether the location

is effectively at the disposal of the enterprise and the nature of the activities conducted there. As with other aspects of permanent establishment analysis, individual jurisdictions may apply these principles differently under their domestic law and treaty practice.

This issue creates a planning paradox. The presence of a leased office may strengthen the argument that a fixed place of business exists. Yet the absence of a leased office does not necessarily eliminate risk if the employee's home serves the same practical function. Consequently, the strongest permanent establishment defense is often not the absence of office space, but the nature of the activities being performed within the jurisdiction.

Permanent Establishment Planning

High-Risk vs. Low-Risk EOR Roles The distinction between low-risk and high-risk EOR arrangements often comes down to the nature of the employee's activities. A U.S. software company that engages a support engineer in Spain through an EOR may have a significantly different risk profile than a company that hires a Spain-based country manager responsible for building the local market and driving revenue growth.

For that reason, permanent establishment analysis — and the broader global tax planning framework within which it sits — should occur before employees are deployed rather than after a market has been established. The review should focus on the expected functions of local personnel, the authority exercised within the jurisdiction, the practical use of any workspace, and the strategic objectives of the expansion.

Equally important, the analysis should be revisited periodically. A structure that appears low risk when a company has a single employee testing a market may present a materially different profile several years later as local operations expand, responsibilities evolve, and revenue grows.

Key Takeaways

EOR Arrangements Do Not Eliminate PE Risk. An EOR primarily addresses workforce administration and labor-law compliance. The existence of a taxable presence remains a separate question governed by the applicable permanent establishment rules. EORs can provide an efficient mechanism for entering foreign markets, engaging local talent, and complying with employment requirements. They do not, however, replace the need for a thoughtful permanent establishment analysis — or a comprehensive global tax planning strategy.

For U.S. multinationals, the decisive questions remain where business activities are conducted, who performs them, what authority exists locally, and whether the foreign jurisdiction can reasonably conclude that the enterprise has established a taxable presence within its borders. As tax authorities continue to emphasize economic substance and operational reality, businesses that integrate permanent establishment analysis into their [global tax planning](#) will be better positioned to pursue growth while managing tax risk in a deliberate and defensible manner.

CONTACT KBF ADVISORY

EOR arrangements can accelerate international expansion — but they do not eliminate permanent establishment risk. Our [international tax team](#) helps U.S. multinationals evaluate PE exposure before employees are deployed, structure [cross-border arrangements](#) to reflect operational reality, and revisit that analysis as foreign operations grow. [Contact KBF](#) to discuss your international expansion and the permanent establishment considerations that come with it.

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