

A Narrower Lens on Source Taxation at Sea



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In this article, Berlin explains the OECD model tax convention's optional time-based permanent establishment provision for the exploration and exploitation of extractable natural

resources and how it affects taxation of economic activities at sea.

The OECD's 2025 update to the model tax convention is a measured intervention with potential consequences for industries whose operations straddle borders, coastlines, and continental shelves. Approved by the Committee on Fiscal Affairs on October 13, 2025, and adopted by the OECD council on November 18, 2025, it introduces into the commentary on article 5 an optional time-based permanent establishment provision for activities connected with the exploration and exploitation of extractable natural resources. This optional clause reduces reliance on traditional fixed place of business criteria by allowing treaty partners to define a specific duration of operations that, once exceeded, triggers a PE.¹

This article examines the implication of the new optional article for offshore activities at sea.

The New Optional Time-Based PE Test

The centerpiece of the new provision is a time-based mechanism for determining whether an enterprise has established a taxable nexus in the source state. Rather than examining whether a mobile offshore unit, survey vessel, or temporary installation satisfies geographic permanence, taxing rights instead hinge on whether activity persists longer than a bilaterally agreed threshold. This threshold applies independently of article 5(1), allowing contracting states to capture exploration and associated activities.²

Seismic campaigns, drilling programs, and subsea infrastructure work scopes often shift across territorial seas or areas where sovereign rights over the seabed and subsoil apply. The emphasis therefore moves from commercial and geographical coherence to the cumulative duration of operations.

The OECD commentary explains that the optional clause may be tailored for offshore (and onshore) environments. In the offshore context, an important interpretive point is that the provision continues to require that the relevant activities be carried out "in the other Contracting State." To avoid uncertainty over the geographical scope of this phrase, it is long-standing treaty practice for states to define their territory in a manner that expressly extends to the maritime zones in which they are permitted, under international law, to exercise sovereign rights over the seabed, its subsoil, and their natural resources. This drafting technique ensures that offshore areas such as the continental shelf are treated as forming part of the source state for the purposes of applying the offshore provision, thereby providing clarity as to

¹ OECD, "The 2025 Update to the OECD Model Tax Convention" (2025).

² For an analysis of when actions of a business carried out at sea can create a PE under international agreements and model tax treaties in general, see Karl Berlin and Louise Blichfeldt Fjord, "The Sea as a Place of Business," *Tax Notes Int'l*, Aug. 11, 2025, p. 877.