

Webinar

Navigating Tax Challenges in the Era of Global Workforces and Permanent Establishments

Presentation by **Troels Kjølby Nielsen** and **Niels Reinau**
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Your presenters today



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Agenda

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PwC's global workforce hopes and fears survey

2

PE threshold - policy developments

3

PE threshold - what are we seeing from tax authorities?

4

What actions might you take in response?

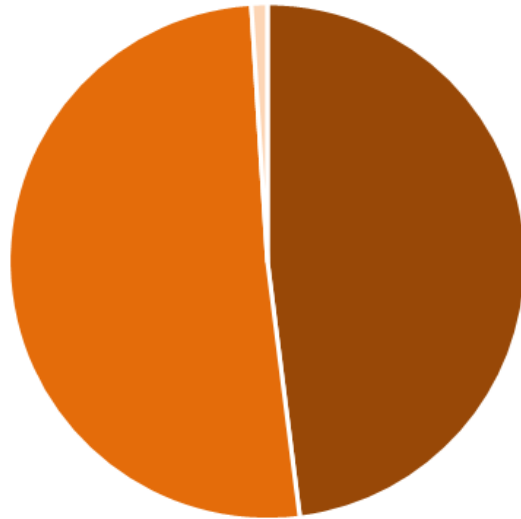


PwC's global
workforce hopes
and fears survey

PwC's global workforce hopes and fears survey

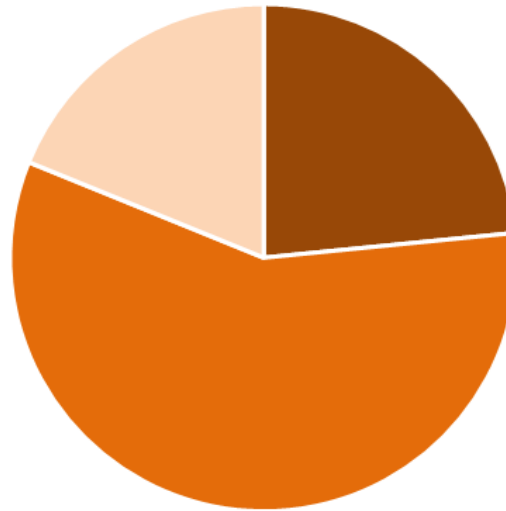
Remote working patterns (overall global results)

Q13. Can your job be done remotely / from home?



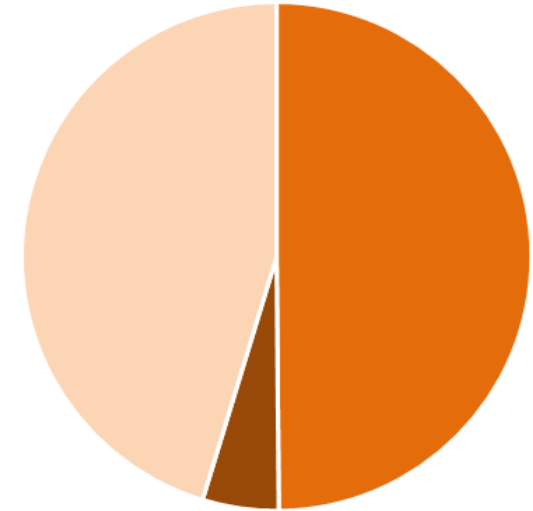
■ Yes (48%) ■ No (51%) ■ Don't know (1%)

Q14. Regarding your current role, how are you currently working?



■ Full-time remote working (23%)
■ Hybrid working (58%)
■ Full-time in-person working (19%)

Q15. In the past 12 months, have you worked remotely from another country?

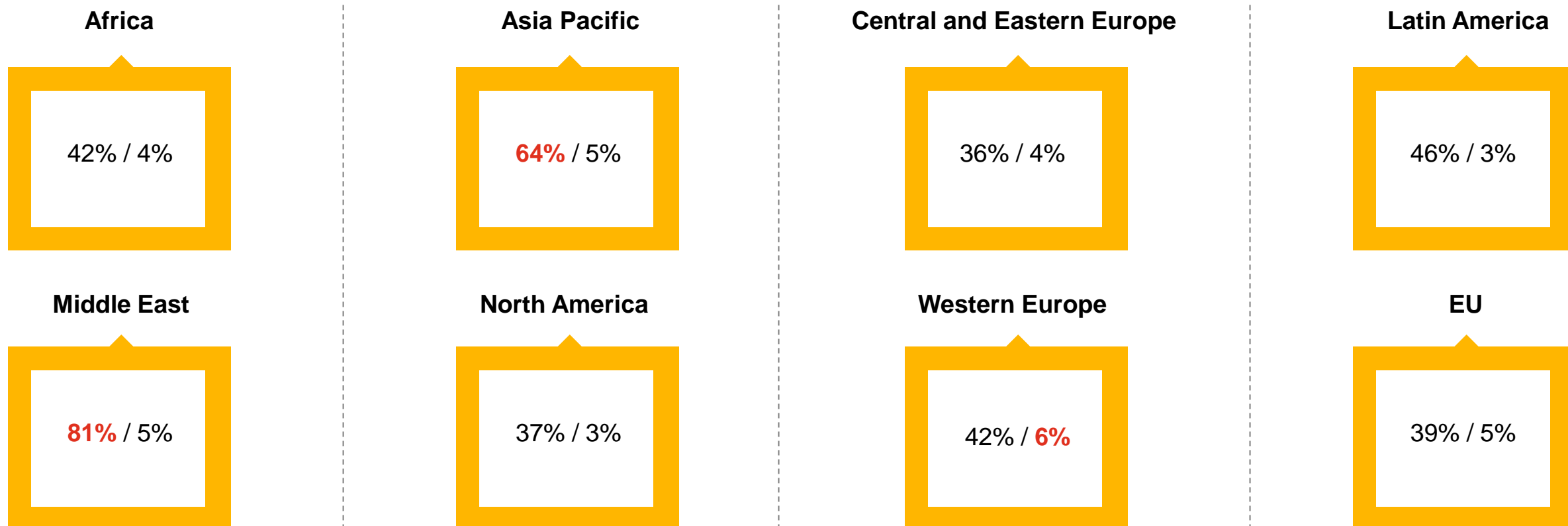


■ Yes, and my employer was aware (51%)
■ Yes, and my employer was not aware (5%)
■ No (46%)

PwC's global workforce hopes and fears survey

Remote working patterns – divided by region

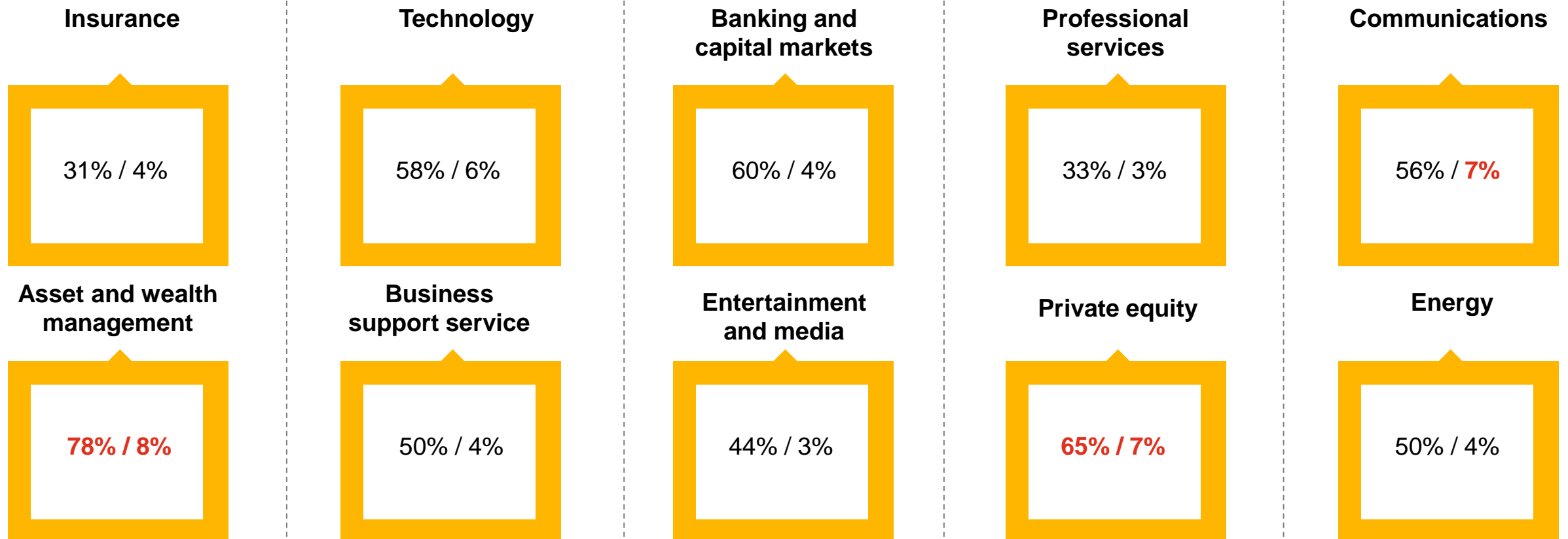
Worked cross border and my employer was **Aware/Not aware** - with highest values in red
(NB: of the respondents who currently work full-time remote/hybrid):



PwC's global workforce hopes and fears survey

Remote working patterns – divided by sector

Worked cross border and my employer was **Aware/Not aware** - with highest values in red
(NB: of the respondents who currently work full-time remote/hybrid):

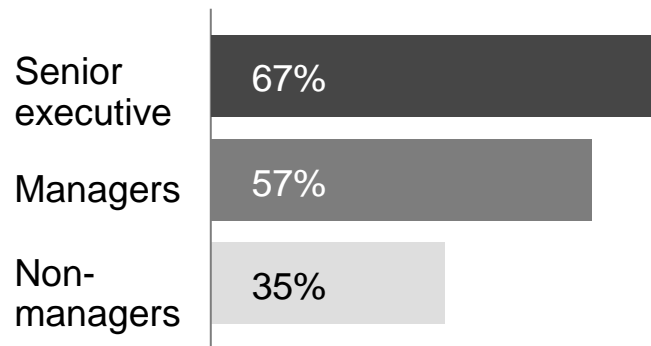


PwC's global workforce hopes and fears survey

Labour mobility increases with seniority

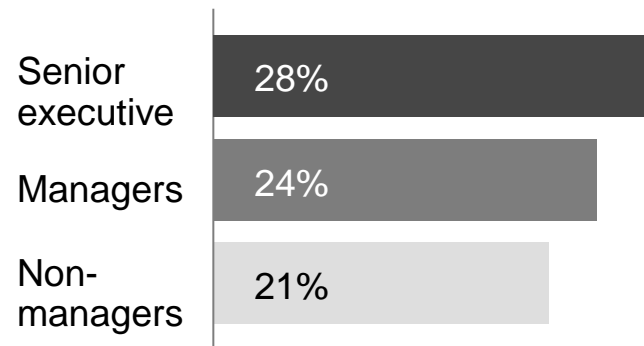
The percentage of respondents, by grade, who suggested their job can be done remotely/from home:

- **67% of senior executives suggested their job can be done remotely/from home**
- Compared to 57% of managers
- And 35% of non-managers.



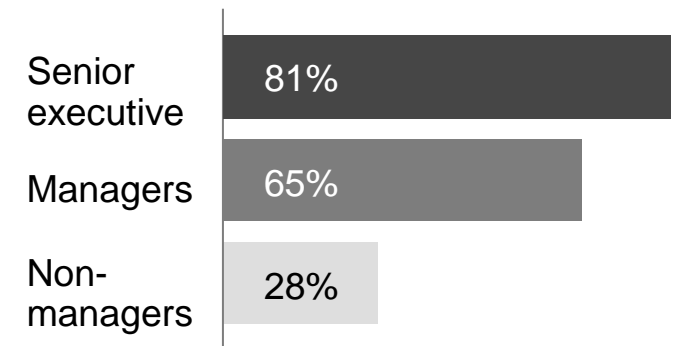
For the respondents whose job can be done remotely/from home:

- **28% of senior executives are currently working full-time remote/59% are working hybrid**
- 24% of managers are currently working full-time remote/61% are working hybrid
- 21% of non-managers are currently working full-time remote/53% are working hybrid



For the respondents working remotely or hybrid, the percentage that worked across borders in the last 12 months:

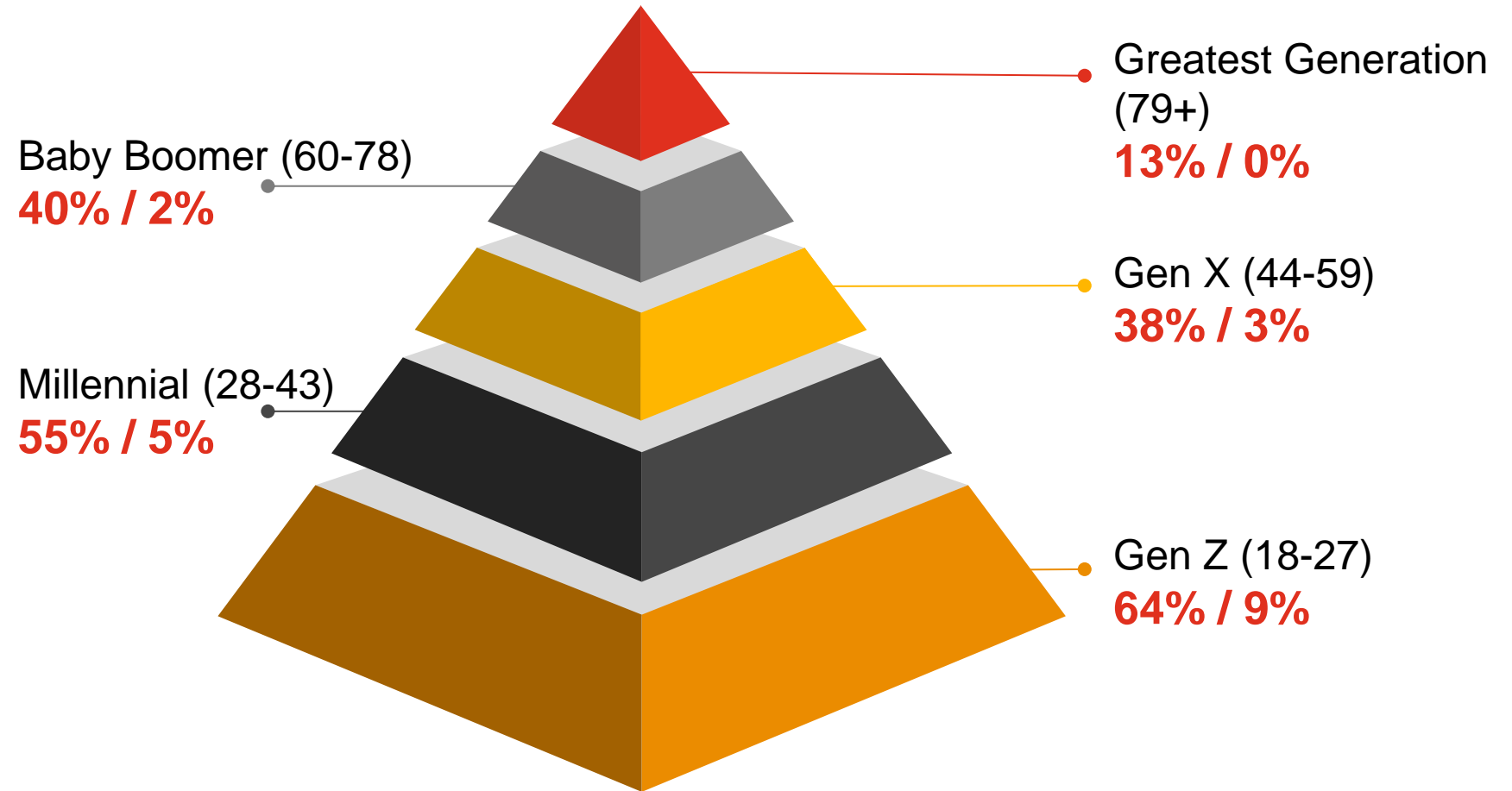
- **Senior executive (including director or vice president): 74% (+7% not known by employer) = 81% total**
- Manager: 59% (+6%) = 65% total
- Non-manager: 25% (+3%) = 28% total



PwC's global workforce hopes and fears survey

Labour mobility and age

Worked cross border and my employer was **Aware/Not aware**
(NB: of the respondents who currently work full-time remote/hybrid):



2

PE threshold -
policy developments

Permanent establishment - key technical points



OECD model treaty definition (emphasis added):

FPOB PE

1. 'For the purposes of this Convention, the term “**permanent** establishment” means a **fixed place of business** through which the **business of an enterprise** is wholly or partly carried on.
2. The term “permanent establishment” includes especially: a place of management, a branch, an office, a factory, a workshop, and a mine, oil or gas well etc.

Dependent agent PE

Pre-BEPS definition: The agent has and habitually exercises an authority to **conclude contracts** in the name of the non-resident enterprise.

Post-BEPS definition: The agent habitually concludes contracts, or **habitually plays the principal role leading to the conclusion of contracts** that are routinely concluded without material modification by the enterprise.



OECD Guidance on working from home

Comment 10 – [...] a certain amount of **space at its disposal** [...] for business activities is sufficient [...].
No formal legal right to use that place is therefore required.

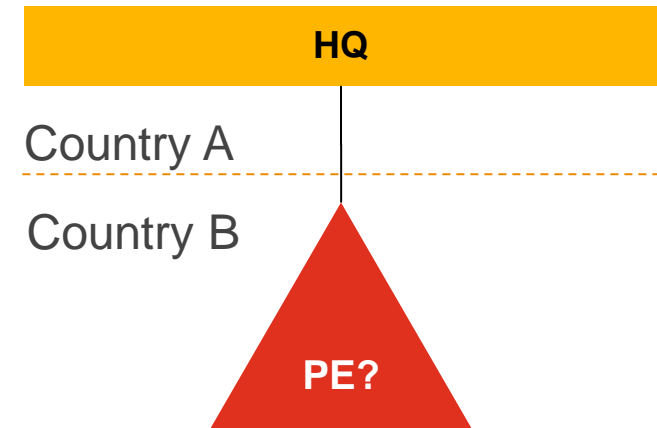
Comment 18

1. Often - **intermittent or incidental** should not be considered “at the disposal”
2. Where, used on a **continuous basis and the enterprise has required the individual to use that location** to carry on the enterprise’s business (**e.g. by not providing an office to an employee** (where the nature of the employment clearly requires an office), the home office may be considered to be at the disposal of the enterprise.



Comment 19

1. A cross-frontier worker working from home rather than from **the office made available** 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.



Clarity is needed!

- What is intermittent?
- Does it matter how many home offices there are in a country?
- Does seniority matter?

Auxiliary nature – a business view

	Enabling functions	Other business areas	Core of the business
	Auxiliary?	Not auxiliary	Not auxiliary
	Auxiliary?	Auxiliary??	Not auxiliary
Staff Seniority ↑	Auxiliary	Auxiliary?	Not auxiliary
	Enabling functions	...	Value driving functions

Auxiliary =

- Carried on to support, without being part of, the essential and significant part of the activity of the enterprise as a whole.

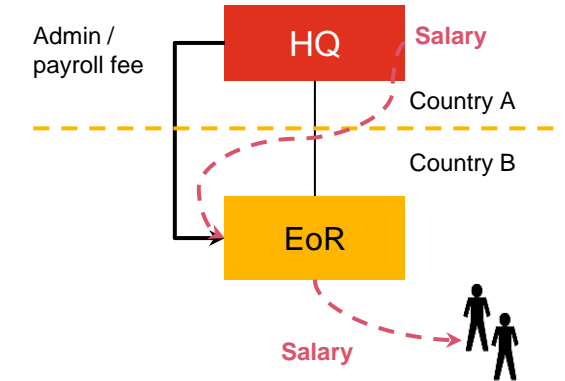
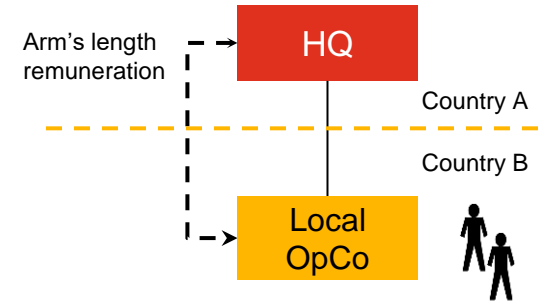
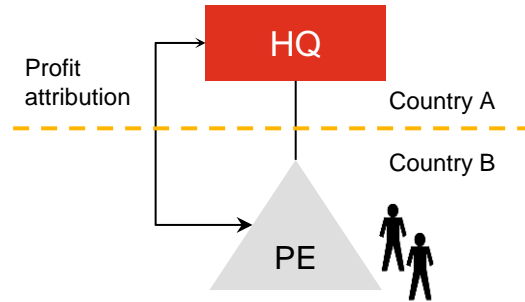
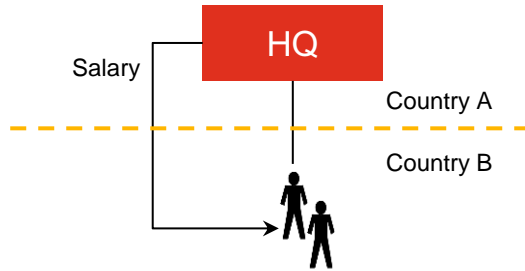
Auxiliary ≠

- Identical to the general purpose of the whole enterprise

3

PE threshold - what
are we seeing from
tax authorities

Most common scenarios for employees



Scenario 1

Employees working from home outside country A where their employer is based not constituting a PE

Scenario 2

Employees working from home outside country A where their employer is based in a registered PE

Scenario 3

Employees working outside country A where the service recipient is based. They are employed by an entity in country B where they live. This entity provides a service back the HQ for which it receives an arm's length remuneration.

Scenario 4

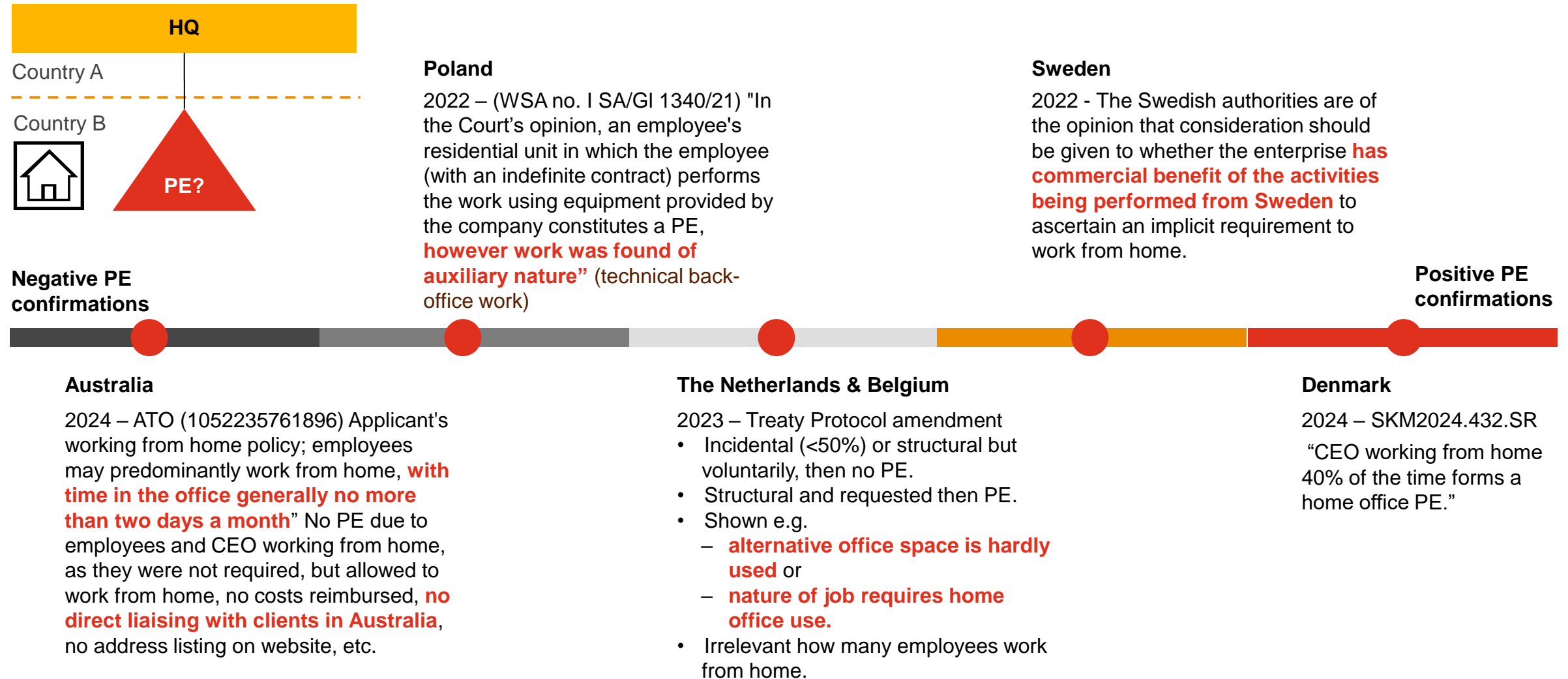
Employees working outside country A where their economic employer is based, they continue to act directly for the risk and account of HQ. The local entity is the employer of record providing a payroll service for which it receives an arm's length remuneration.

Tax authorities often take a substance-over-form approach, i.e. :

- Independent' contractors when working exclusively for a single company should be considered "employees"; and
- Employees 'formally' hired through a local "EoR", employer of record (payrolling agency), which can also be a group entity(!) that continue to perform their activities directly for the risk and account of another group company
- Employees seconded to a "host firm" that continue to perform their activities directly for the risk and account of their "home firm"

Domestic policy developments of home office PEs

While waiting for OECD consensus, countries develop their own policies and guidance either unilaterally or bilaterally



Home office PEs - key technical points



Developments in Danish law

FPOB PE

1. 'For the purposes of this Convention, the term “**permanent** establishment” means a **fixed place of business** through which the **business of an enterprise** is **wholly or partly carried on**.
2. Due to COVID-19 guidelines were issued as a supplement to the comments to OECD Model Convention, para. 18 and 19

COVID-19 guidance signal SKM 2020.298 SKTST

Criteria to determine whether a home office is “at the disposal” of the employer:

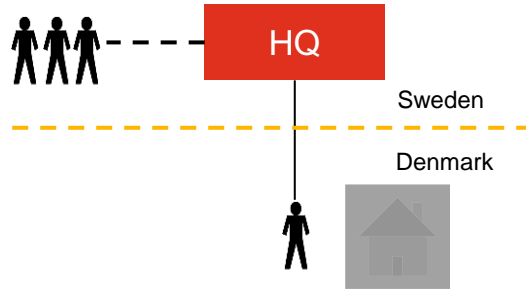
1. Does the employee have another permanent workplace available where the work is usually performed?
2. Is there an (implicit) agreement between the company and employee to perform part of his work from home?
3. Does the employee's work from home office occur randomly or sporadically or is it planned or can be planned?
4. Is the business activity carried out from the home office advantageously carried out from Denmark?

Between 2019-2021 more than half of the published decisions about PE concerned home offices.



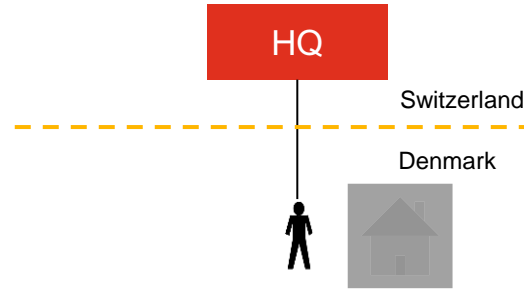
Danish case law on home offices

Senior executives (personnel with managerial authority)



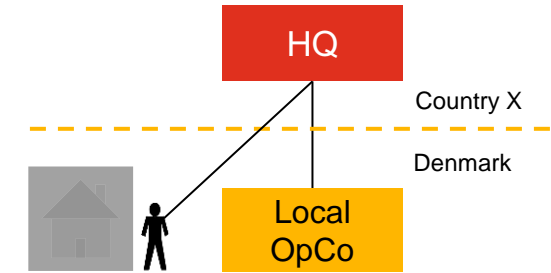
SKM 2024.432 SR – PE

- CEO worked 40 % in DK
- Received the board's approval
- Work performed in DK did not occur randomly or sporadically
- CEO had decisive influence on daily management and significant position in H1 → focus on managerial decisions
- Similar decision in SKM2023.423 SR



SKM 2022.166 SR – no PE

- CFO and member of the executive board – worked 2 days a week from DK
- Work performed in DK did not occur randomly or sporadically
- CFO job was internal in nature
- Not involved in sales or similar in DK
- Not able to make decision in the management → No business advantage in having the CFO working in Denmark.



SKM 2022.406 SR – no PE

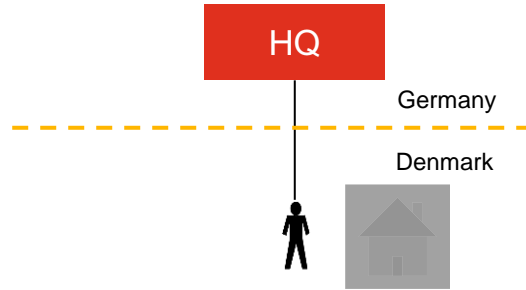
- CEO's work occurred randomly and sporadically in DK
- Responsible for the daily management
- Not involved in sales or similar work in DK.
- The sales function was carried out by a subsidiary

Issues to consider based on case law:

- Focus on whether the person has managerial authority
- A senior executive working in DK can result in a PE, even if the employer has no connection to DK in general
- As a general rule, a senior executive do not perform work of a preparatory or auxiliary nature
- Does the work performed in DK occur randomly and sporadically?

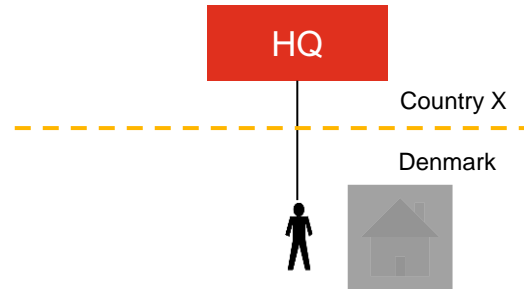
Danish case law on home offices

Employees with no extensive managerial authority



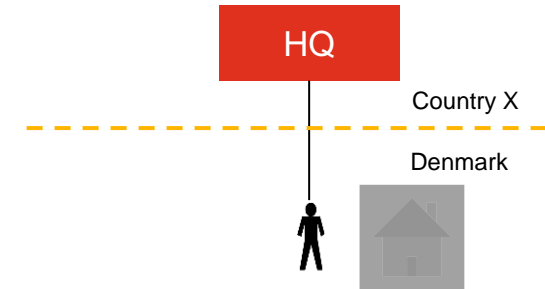
SKM 2020.208 SR - PE

- Employee worked from home for a period of 6 months
- The nature of work performed in DK constituted a significant part and was the core business of the German firm.
- The work performed in DK was to develop the business in DK, pre-negotiating contracts, build website, marketing activities, customer research
- Not preparatory or auxiliary in nature



SKM 2021.458 SR – no PE

- Employee was Head of Strategy and Transformation
- Worked once a week in DK and limited to 18 months
- Home office at the disposal of employer
- No business interest in having the employee in DK
- The employer did not require the employee to work from home
- Private reasons for working from DK



SKM 2022.58 SR – PE

- Employee should establish sales channels and develop the Scandinavian market.
- The employee had a central function in the development of the core business activity
- There was a business interest in having the employee work from the home office in DK.

Issues to consider based on case law:

- Does the employee perform a core business activity in DK?
- Is there a business interest in having the work carried out in Denmark?
- Is the work performed in Denmark time-limited?

European overview

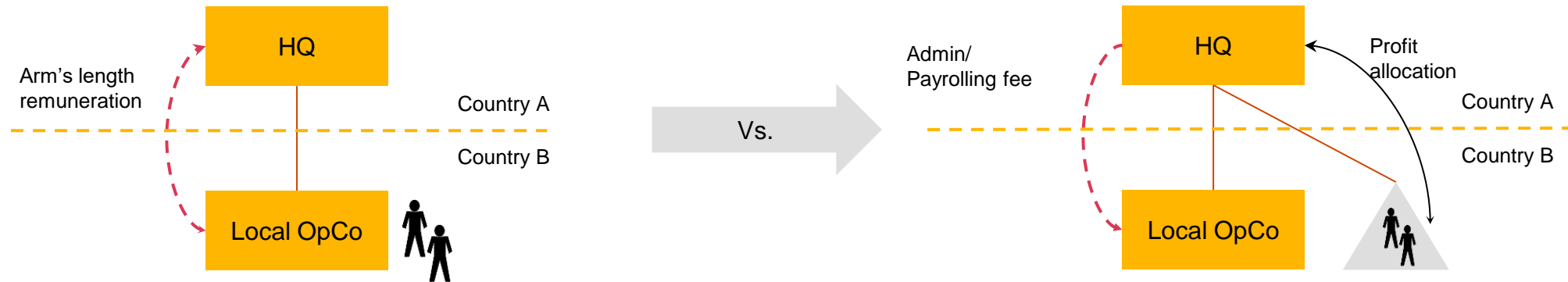


Country	Time threshold	Remarks concerning remote working
Belgium	30 days	Wide interpretation is generally applied
Croatia	3 months	Lack of practical PE cases, local guidelines and thresholds
Germany	No specific threshold, but often 6 months is used as an indication	Important criteria is power of disposal over the premises.
Ireland	No specific threshold	Is the work carried out by the employee sufficient to be considered a business or trade or something less than that?
Norway	No specific threshold Possible from day 1	An entity is liable to tax in Norway when engaged in a business that is either conducted or managed in Norway. Turnover or duration is of little significance. The term “business” is interpreted quite extensively.
Sweden	Normally 6 months	If a person annually works 2-3 months and then returns for the same period of time year after year for at least three years, then the Swedish Tax Agency can consider that a PE has arisen in Sweden.
Switzerland	Normally 60 working days	Risk depends on how many employees work remotely, duration, frequency and the purpose of the remote work; whether the activities are related to Swiss clients, etc.

4

Discussion - what actions might you take in response?

Addressing PE risk through local employment – does it work?



39. As explained in paragraph 8.11 of the Commentary of Article 15, however, there may be cases where individuals **who are formally employed by an enterprise will actually be carrying on the business of another enterprise** and where, therefore, the first enterprise should not be considered to be carrying on its own business at the location where these individuals will perform that work.

8.11 Conversely, where services rendered by an individual may properly be regarded by a State as **rendered in an employment relationship rather than as under a contract for services concluded between two enterprises**, that State should logically also consider that the individual is not carrying on the business of the enterprise that constitutes that individual's formal employer; this could be relevant, for example, for purpose of determining whether **that enterprise has a permanent establishment** at that place where the individual performs his activities.

- Often practical approach to mitigate risk, however, it does not 'eliminate' the PE risk
- Substance-over-form, formal vs. economic employment, particularly for senior staff (no oversight)

Ensure transfer pricing is right!

Suggested actions

- Work closely with HR and legal departments to develop joint policies
- Review cross border flexible working policies within your organisation to ensure you are able to:
 - Ensure assumptions being made regarding what is low risk/acceptable
 - Obtain data to ensure compliance with multiple regulations
 - Educate the business on the above compliance costs and potential risks (including criminal sanctions where applicable)
- Create frameworks to help the business assess flexible working requests to reduce manual intervention/review as far as feasible
- Consider possibilities of working abroad in your employment contracts/employee manuals
- Consider communication/education to employees to ensure they are aware of their obligations
- Closely monitor developments on commentary to OECD Model on home working as likely to have impact on flexible working practices of many groups



Thank you for your attendance!



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