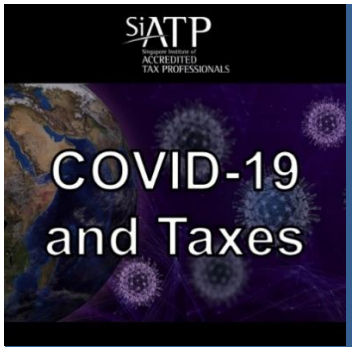


# COVID-19 and Taxes

*Tax Implications Arising From The Pandemic*

24 June 2020, Wednesday

2020 will go down in history as a turning point for the world.

Since the start of the COVID-19 outbreak, governments worldwide have scrambled to implement a slew of extraordinary measures, such as lockdowns and travel restrictions, in a determined attempt to stem the spread of the virus. Relief packages have also been rolled out in record time around the world to try to cushion the inevitable economic fallout.

On a personal level, people have changed the way they communicate, the way they purchase, the way they work, and pretty much the way they do just about anything (even the way they stock up their toilet rolls). On a corporate level, businesses have been forced to adapt quickly to the momentous changes to stay in the game.

As the COVID-19 situation evolves and the world adjusts to the new normal, it is timely for businesses to start looking beyond immediate business survival issues and think about the wider implications of COVID-19 – one of most important being tax implications.

"This unprecedented situation is raising many tax issues, especially where there are cross-border elements in the equation; for example, cross-border workers, or individuals who are stranded in a country that is not their country of residence. These issues have an impact on the right to tax between countries, which is currently governed by international tax treaty rules that delineate taxing rights." In a policy response to COVID-19, Organisation for Economic Co-operation and Development (OECD) issued a guidance, dated 3 April 2020, based on its analysis of the international tax treaty rules.[1]

In Singapore, Singapore Chartered Tax Professionals (formerly Singapore Institute of Accredited Tax Professionals) had reached out to Inland Revenue Authority of Singapore (IRAS) in early April, highlighting pertinent tax issues faced by businesses and individuals arising from the COVID-19 situation, to which, IRAS has promptly responded to and provided clarity to taxpayers and the tax community.

This article delves into three important tax issues and highlights the key considerations that businesses and their employees should take note of.

## *Corporate Tax Residency Status*

Lockdowns and travel disruptions meant that key executives and directors may have been unable to travel to another country, or return to their home country, to attend a Board of Director meeting in person.

[1] "OECD Secretariat Analysis of Tax Treaties And The Impact Of The COVID-19 Crisis" (3 April 2020), Organisation for Economic Co-operation and Development (OECD)

As the tax residency status of a company is typically determined by the location where strategic decisions are made, a company would need to assess whether the inability of key executives and directors to physically attend Board of Directors meetings, during which strategic decisions of the company are made, may lead to a potential change in its "place of effective management". This, in turn, can change its tax residency status under the relevant domestic laws and affect the country where it is regarded as a resident for tax treaty purposes.

In Singapore, a company is a resident for income tax purposes if its control and management is exercised in Singapore. In practice, the location of the company's Board of Directors meetings is generally seen as a key factor in determining whether the control and management is exercised in Singapore.

As a result of travel restrictions to Singapore, a company which would normally convene its Board of Directors meetings in Singapore, may now have to hold its Board of Directors meetings physically outside of Singapore, or via electronic means. The company, which would normally be regarded as a Singapore tax resident for income tax purposes, may now face uncertainty regarding its tax residency status as its control and management may be deemed to be exercised outside of Singapore. There is concern as to whether the company in this scenario will continue to be regarded as a Singapore tax resident, failing which this change can possibly lead to significant tax implications for the company (such as losing access to Singapore's extensive tax treaty network).

In its COVID-19 Support Measures and Tax Guidance on corporate tax residency, IRAS assured businesses that a company can still be regarded as a Singapore tax resident for Year of Assessment (YA) 2021 even if it is unable to hold its Board of Directors meeting in Singapore due to the travel restrictions relating to COVID-19. This is provided that the company is a Singapore tax resident for YA 2020, there are no other changes to the economic circumstances of the company, and that the Board of Directors meeting is held outside Singapore or via electronic means due to the directors being temporarily restricted in their travel as a consequence of COVID-19.

Conversely, a foreign company that is not a Singapore tax resident for YA 2020 but has to hold its Board of Directors meeting in Singapore due to travel restrictions relating to COVID-19 will continue to be considered as a non-resident for YA 2021, provided that there are no other changes to the company's economic circumstances.

As different countries may have different guidance or policy on the corporate tax residency issues arising from COVID-19, companies should remain vigilant and actively monitor developments in countries where their key executives and directors are temporarily located due to the COVID-19 situation, to mitigate their tax risks.

## *Permanent Establishment (PE)*

Broadly, the concept of PE is used to determine the right of a jurisdiction to levy tax on the profits of a foreign enterprise. If a foreign enterprise has a PE in Singapore based on the Singapore Income Tax Act, and the PE has income accruing in or derived from Singapore or any foreign income received in Singapore, the foreign enterprise will be, subject to any exceptions, liable to tax in Singapore under Singapore's tax laws.

If the foreign enterprise engaging in cross-border transaction is a resident of a jurisdiction with which Singapore has concluded an Agreement for the Avoidance of Double Taxation (DTA), the relevant DTA will take precedence over Singapore's tax laws and determine the taxing rights on the foreign enterprise's profits.

A PE generally refers to a fixed place of business through which the business of an enterprise is wholly or partly carried on (for example, a branch or an office). Depending on the terms of the relevant DTA, certain activities carried out in a jurisdiction may also constitute a PE, notwithstanding that there is no fixed place of business established in that jurisdiction. Such activities may include services furnished by a company through its employees that continue for more than a specified period, or the presence of a dependent agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise.

The unexpected and prolonged travel disruptions caused by the COVID-19 situation has left many employees stranded, forcing them to work in countries other than their usual country of residence or their home country. This makes it critical for companies to consider whether the presence of their employees (and the activities performed by these employees) will create a PE (and accordingly a taxable presence) for the company in these other countries, thereby triggering new filing requirements and tax obligations for the company.

In the Singapore's context, foreign companies would be interested to know if the extended presence of their employees, due to the travel restrictions imposed, may lead to the creation of a PE in Singapore for the company. For example, if a salesperson of a foreign company finds himself in a position to conclude contracts while he is in Singapore (due to the COVID-19 situation), the foreign company would want to know if the salesperson may create a taxable presence for the company in Singapore.

For Singapore domestic tax purposes, IRAS has clarified that the unplanned presence of employees of foreign companies in Singapore due to the travel restrictions relating to COVID-19 would not result in the creation of a PE in Singapore for the foreign company, subject to the company meeting a set of conditions (such as the foreign company must not have a PE in Singapore for YA 2020, and the activities performed by the employees during the unplanned presence would not have been performed in Singapore if not for the travel restrictions).

## *Individual Tax*

### TAX RESIDENCY AND RELATED ISSUES

In Singapore, an individual will be treated as a tax resident for a particular YA if he is a Singapore Citizen or Singapore Permanent Resident who resides in Singapore (except for temporary absences), or a foreigner who has stayed or worked in Singapore (excluding a director of a company) for 183 days or more in the year preceding the YA. A non-resident who has exercised employment in Singapore for no more than 60 days in a year would be exempt from tax on his short-term employment income.

Given that the tax residency of an individual may differ depending on the length of his stay in Singapore in a particular YA, travel restrictions arising from the COVID-19 situation can naturally have an impact to the individual's tax position in Singapore.

For example, a non-resident foreigner who is exercising overseas employment (and is on a short-term business assignment in Singapore) may face uncertainty over the taxability of his employment income for the period of his extended stay in Singapore.

IRAS has since clarified that a non-resident foreigner exercising overseas employment and on a short-term business assignment in Singapore, but who is now working remotely from Singapore for his overseas employer due to travel restrictions caused by COVID-19, will be treated as not exercising an employment in Singapore for the period of his extended stay if two conditions are met.

Firstly, the period of extended stay is not more than 60 days, and secondly, the work done during the extended stay is not connected to the business assignment in Singapore and would have been performed overseas if not for COVID-19. It should be noted that normal tax rules will continue to apply to determine the taxability of the non-resident foreigner's employment income for his short-term assignment (excluding the period of his extended stay).

For a Singapore Citizen or Singapore Permanent Resident who is exercising overseas employment, but is now working remotely from Singapore during the COVID-19 situation for his overseas employment, he will continue to be considered as not exercising an employment in Singapore for the period from the date of his return to 30 September 2020 (tentatively subject to review as the COVID-19 situation evolves), provided that there is no change in the contractual terms governing his employment overseas before and after his return to Singapore, and that it is a temporary work arrangement due to COVID-19.

### OTHER NOTABLE AREAS

One notable area is the taxability of additional benefits-in-kind provided to employees due to the COVID-19 situation (such as cash allowances or reimbursements to cover additional expenses from working from home). It should be noted that there is currently no special tax treatment for benefits-in-kind provided due to COVID-19 in Singapore; existing tax treatment applies.

Another area relates to the Not Ordinarily Resident (NOR) scheme. Individuals under the NOR scheme who are unable to spend at least 90 days outside Singapore for business reasons (as stipulated in the qualifying conditions) will not be able to enjoy the time apportionment concession, notwithstanding that the failure to meet the requirement is a result of travel restrictions.

## *Conclusion*

With countries gradually easing restrictions to restart their economies, governments and businesses alike are moving into uncharted territories and discovering what constitutes the new normal. For example, many companies have turned to telecommuting to keep their businesses going during the lockdown. As the COVID-19 pandemic peters out, it remains to be seen if the bulk of the workforce will transit from telecommuting back to the traditional office setting. If telecommuting becomes the new normal, then surely the tax concepts as we know them will also have to adapt to the times to remain relevant. Maybe one day, the location of the Board of Directors meeting will no longer be a factor in determining the tax residency of a company.

While this article has highlighted some income tax issues to be aware of due to the pandemic, it must also be noted that there are tax issues pertaining to other forms of taxes, such as property tax and GST, that might have implications to businesses. In the wake of the COVID-19 situation, it would be wise for companies to keep abreast of the latest tax developments to maximise the tax benefits from the generous COVID-19 support and relief measures in each country. Being current can also help companies sidestep potential tax pitfalls and avoid contributing back to governments' relief funds right away!

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