



Tax Espresso – Special Alert

FAQs on international tax issues due to COVID-19 travel restrictions

The Inland Revenue Board of Malaysia (IRBM) has released the [Frequently Asked Questions](#) (FAQs) on international tax issues due to COVID-19 travel restrictions. The FAQs address concerns taxpayers may have on the impact of COVID-19 travel restrictions in determining tax residence status in Malaysia and whether a foreign corporation is deemed to have a permanent establishment in Malaysia. Here is the summary:

1. Individual

- (i) For determining an individual's tax residence where the COVID-19 travel restriction causes his temporary absence from Malaysia, the period of his temporary absence from Malaysia shall form part of the period or periods in Malaysia.
- (ii) For determining an individual's tax residence where the COVID-19 travel restriction causes his temporary presence in Malaysia, the period of his temporary presence in Malaysia shall not form part of the period or periods in Malaysia.

- (iii) For individuals who have been exercising employment outside Malaysia but have to temporarily work in Malaysia due to COVID-19 travel restrictions, such individuals will be treated as not exercising employment in Malaysia (i.e. the individual's employment income for the period of temporary working in Malaysia will not be taxable in Malaysia), provided that the following conditions are met: -
 - (a) there is no change in the contractual terms governing the individual's employment overseas before and after his return to Malaysia; and
 - (b) this is a temporary work arrangement due to COVID-19 travel restrictions.

Normal tax rules will apply to determine the taxability of the individual's employment income for work done in Malaysia, if any of the above conditions are not met.

- (iv) For individuals who have been exercising employment in Malaysia but have to temporarily work outside Malaysia due to COVID-19 travel restrictions, the individuals are regarded to be exercising employment in Malaysia (i.e. the individual's employment income is deemed derived from Malaysia and therefore will still be taxable in Malaysia). Individuals may be subject to taxation in the locality where they are temporarily present if no special tax measures for COVID-19 are provided by that locality's tax authority. For individuals who are present in a country for less than 183 days, they will not be taxable in that country if there is a tax treaty with Malaysia. However, if they are in a country that has no tax treaty with Malaysia, they might be subject to taxation. In such case, the individual may apply for credit relief under the Income Tax Act 1967.
- (v) For non-resident individuals who have been working remotely from Malaysia for their overseas employer due to COVID-19 travel restrictions, such individuals are considered as not exercising employment in Malaysia for the period of their temporary presence in Malaysia, provided that the following conditions are met: -
 - (a) the period of temporary presence is for a period of not more than 60 days; and
 - (b) the work done during the temporary presence in Malaysia is not connected to the assignment in Malaysia and would have been performed overseas if not for COVID-19 travel restrictions.

2. Company

- (i) The IRBM is prepared to presume a company a Malaysian resident, if the company is not able to convene its Board of Directors' (BOD) meeting in Malaysia because of the COVID-19 travel restrictions, provided the company meets all the following conditions:
 - (a) The company is a resident in the immediately preceding year of assessment;
 - (b) There are no changes to the economic circumstances of the company; and
 - (c) The directors of the company have to attend the BOD meeting held outside Malaysia (via physical meeting or electronic means) due to COVID-19 travel restrictions.

Note: Economic circumstances are the principal activities and business model of the company, the nature of the business operations and the conduct of the business in Malaysia and elsewhere, and the usual locations in which the company operates.

- (ii) The IRBM is prepared to presume a company to be a non-resident in Malaysia if it convenes its BOD meeting in Malaysia due to COVID-19

travel restrictions, provided the company meets all the following conditions:

- (a) The company has to hold its BOD meeting in Malaysia due to COVID-19 travel restrictions; and
- (b) There are no changes to the economic circumstance of the company.

3. Permanent Establishment (PE)

For a non-resident company in Malaysia, the IRBM will consider that its employee's or personnel's temporary presence in Malaysia caused by COVID-19 travel restrictions does not lead to a creation of a PE in Malaysia, provided the non-resident company meets the following criteria:

- (a) The company does not have a PE in Malaysia before the existence of COVID-19 travel restrictions;
- (b) There are no other changes to the economic circumstances of the company;
- (c) The temporary presence of the company's employees in Malaysia is solely due to travel restrictions relating to COVID-19; and
- (d) The activities performed by the company's employees during their temporary presence in Malaysia would not have been performed in Malaysia if not for COVID-19 travel restrictions.

Please see the [FAQs](#) for details and other matters addressed (including the relevant documentations and records required to be kept by a taxpayer).



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