



## Singapore Business Tax developments

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Greetings from your Tax & Legal team at Deloitte Singapore. We hope that you and your loved ones are staying safe and healthy despite these challenging times. As we navigate ourselves through this trying period, we are committed to giving you the support you need.

We are therefore pleased to share the following update with you.

#### **IRAS and OECD guidance in view of COVID-19**

##### **IRAS guidance on tax matters arising from COVID-19 travel restrictions**

On Monday 6 April, the Inland Revenue Authority of Singapore (IRAS) published administrative guidance on the impact of COVID-19 related travel restrictions in determining corporate tax residence in Singapore, and whether a foreign company may have a permanent establishment (PE) in Singapore. In particular, the IRAS stated that:

##### *Corporate tax residence*

- a. Where a company was a Singapore tax resident for Year of Assessment (YA) 2020, the IRAS is prepared to consider the company as being Singapore tax resident for YA 2021, notwithstanding that it will not be able to hold board of directors meeting(s) (during which strategic decisions of the company are made) in Singapore due to the COVID-19 related travel restrictions. This is provided that:
  - i. There are no other changes to the economic circumstances of the company<sup>1</sup>.

- ii. The directors of the company have to attend board meetings held outside Singapore or hold the meetings through electronic means (e.g., via video-conferencing, tele-conferencing, etc.) due to such directors being temporarily restricted in their travel as a consequence of COVID-19.

Conversely, where a company was a non-Singapore tax resident for YA 2020, the IRAS is prepared to consider the company as being non-Singapore tax resident for YA 2021, even if its board of directors meeting(s) are held in Singapore during the relevant period. This is provided that:

- i. The company has to hold its board meeting(s) in Singapore due to the COVID-19 related travel restrictions.
- ii. There are no other changes to the economic circumstances of the company<sup>2</sup>.

To support a claim that a company should continue to be treated as a Singapore tax resident or a non-Singapore tax resident, the company should keep relevant documentation and records (e.g., board minutes stating why the directors were attending board meetings from their respective locations), and provide such information and copy documentation to IRAS upon request.

#### *Permanent establishment*

- b. Where employees of a foreign company have to remain in Singapore due to travel restrictions relating to COVID-19, the IRAS will not consider such unplanned presence to result in the creation of a PE of such foreign company in Singapore, provided that:
  - i. The foreign company does not have a PE in Singapore for YA 2020.
  - ii. There are no other changes to the economic circumstances of the company<sup>3</sup>.
  - iii. The unplanned presence of the employees in Singapore is due to travel restrictions relating to COVID-19 and such employees' physical presence in Singapore is temporary (as a guide, generally not more than 183 days in year 2020 from the date of first arrival in Singapore).
  - iv. The activities performed by such employees during the unplanned presence in Singapore would not have been performed in Singapore if not for the said travel restrictions.

To support the claim that there is no PE in Singapore, the company should keep relevant documentation and records, and to provide such information and copy documentation to IRAS upon request.

#### *Individual taxation*

- c. For individuals who have been exercising employment outside Singapore but are now working remotely from Singapore due to COVID-19, the IRAS is prepared to treat such individuals as not exercising an employment in Singapore (i.e., not deriving employment income that is sourced in

Singapore and hence subject to Singapore income tax), subject to conditions.

For Singaporeans/Singapore permanent residents who were exercising their employment outside Singapore but who are now working remotely from Singapore for that employment, the IRAS is prepared to treat such persons as not exercising an employment in Singapore for the period from the date of the individual's return to 30 September 2020<sup>4</sup>, provided that:

- i. There is no change to the contractual terms governing the individual's employment before and after his or her return to Singapore.
- ii. Such arrangement is a temporary work arrangement due to COVID-19.

If such conditions are satisfied, the individual's employment income for the period of his or her stay in Singapore up to 30 September 2020 shall not be taxable in Singapore. Normal tax rules will apply to determine the taxability of the individual's employment income for work done in Singapore, if any of the conditions are not met.

For non-resident foreigners who have been exercising employment outside Singapore and are on a short-term business assignment in Singapore but are now unable to leave due to COVID-19, the IRAS is prepared to treat such individuals as not exercising an employment in Singapore for the period of the extended stay, provided that:

- i. The period of the extended stay is not more than 60 days in length.
- ii. The work done during the extended stay is not connected to the individual's business assignment in Singapore and would have been performed overseas if not for COVID-19.

If the above conditions are satisfied, the individual's employment income for the period of the extended stay shall not be taxable in Singapore. Normal tax rules will apply to determine the taxability of the individual's employment income for the period of his or her extended stay in Singapore, if any of the conditions are not met. The taxation of the individual's employment income attributable to the short-term business assignment will remain subject to the normal tax rules. In addition, if the individual was given another business assignment in Singapore during his or her extended stay, the employment income for the period of the individual's entire stay in Singapore for both assignments will be subject to normal tax rules<sup>5</sup>.

### **OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis**

On Friday 3 April 2020, the Organization for Economic Cooperation and Development (OECD) Secretariat published its views on the application of tax treaty provisions in the context of the COVID-19 pandemic. In summary, the OECD Secretariat noted that:

#### *Corporate tax residence*

- a. The COVID-19 crisis may raise concerns about a potential change in the place of effective management of a company as a result of a relocation, or inability to travel, of chief executive officers or other senior executives<sup>6</sup>. However, it is unlikely that the situation will create any changes to an entity's residence status under a tax treaty as a temporary change in location of the senior executives is an extraordinary and temporary situation due to the COVID-19 crisis. Such change of location should not trigger a change in residency, especially once the tie breaker rule contained in tax treaties is applied<sup>7</sup>.

#### *Permanent establishment*

- b. Some businesses may be concerned that their employees who are located in countries other than the country in which they regularly work, or working from their homes during the COVID-19 crisis will create a PE for them in those countries, which would trigger tax filing requirements and tax obligations.

The OECD Secretariat views that the exceptional and temporary change of the location from which employees exercise their employment because of the COVID-19 crisis, such as working from home, should not create a new PE for the employer<sup>8</sup>. Specifically:

*Fixed place of business PE:* The Commentary on Article 5 of the OECD Model explains that even though part of the business of an enterprise may be carried on at a location (such as an individual's home office); it should not lead to the conclusion that the location is at the disposal of that enterprise simply because the location is used by an individual (e.g., an employee) who works for the enterprise. This is because a PE must have both a degree of permanency and be at the disposal of an enterprise in order for that place to be considered a fixed place of business through which the business of that enterprise is wholly or partly carried on. Hence the carrying on of intermittent business activities at the home of an employee does not make that home a place at the disposal of the enterprise<sup>9</sup>. Also, for a home office to be a PE for an enterprise, it must be used on a continuous basis for carrying on business of an enterprise, which generally has to require the individual to use that location to carry on the enterprise's business. During the COVID-19 crisis, individuals who stay at home to work remotely are typically doing so as a result of government directives. Such situation comprises *force majeure* and does not arise from an enterprise's requirement. Consequently, considering the extraordinary nature of the COVID-19 crisis, and to the extent that it does not become the new norm over time, teleworking from home would not create a PE for the business/employer either because such activity lacks a sufficient degree of permanency or continuity. It may also be because the enterprise has no access or control over the home office<sup>10</sup> except through that one employee.

*Dependent agent PE:* A similar question may also arise whether the activities of an individual temporarily working from home for a non-resident employer could give rise to a dependent agent PE. Under Article 5(5) of the OECD Model, the activities of a dependent agent such as an employee will create a PE for an enterprise if the employee habitually conclude contracts on behalf of the enterprise. In such cases, it will be important to evaluate whether the employee performs these activities in a habitual way<sup>11</sup>. An employee's or agent's activity in a State is unlikely to be regarded as habitual if he or she is only working at home in that State for a short period because of *force majeure* and/or government directives

extraordinarily impacting his or her normal routine<sup>12</sup>. Nevertheless, the OECD Secretariat commented that a different approach may be appropriate, however, if the employee was habitually concluding contracts on behalf of the enterprise in his or her home country before the COVID-19 crisis.

*Construction site PE:* Interestingly, the OECD Secretariat commented that although it appears that many activities on construction sites are being temporarily interrupted by the COVID-19 crisis, the duration of such an interruption of activities should however be included in determining the life of a site and therefore will affect the determination whether a construction site constitutes a PE. This seems to suggest that no relief or “stop-the-clock” rule will be granted in respect of the time threshold to trigger a construction site PE despite such delay being due to the COVID-19 crisis.

#### *Individual tax residence*

- c. Despite the complexity of the rules and their application to a wide range of potentially affected individuals, it is unlikely that the COVID-19 situation will affect individuals' treaty residence position due to the way in which the tiebreaker provisions typically work<sup>13</sup>.

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<sup>1</sup> Economic circumstances' as indicated on the IRAS website include (a) the principal activities and business model of the company; (b) the nature of the business operations and the conduct of the business in Singapore and elsewhere, and (c) the usual locations in which the company operates.

<sup>2</sup> *ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> The IRAS has stated that this date is subject to review as the COVID-19 situation evolves.

<sup>5</sup> In particular, Section 13(16) of the Income Tax Act provides for a safe harbour exemption for employment exercised in Singapore for 60 days or fewer. Hence, where a non-resident individual exercising employment outside Singapore spends 60 days or fewer in Singapore on a short-term business assignment, any employment income attributable to that short-term business assignment would be exempt from Singapore tax. If the business assignment lasts for more than 60 days, the employment income therefrom is *prima facie* taxable, unless relief is available under an applicable tax treaty.

<sup>6</sup> OECD Secretariat, *OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis* (version 3 April 2020), paragraph 14; see: [https://read.oecd-ilibrary.org/view/?ref=127\\_127237-vsdagpp2t3&title=OECD-Secretariat-analysis-of-tax-treaties-and-the-impact-of-the-COVID-19-Crisis](https://read.oecd-ilibrary.org/view/?ref=127_127237-vsdagpp2t3&title=OECD-Secretariat-analysis-of-tax-treaties-and-the-impact-of-the-COVID-19-Crisis).

<sup>7</sup> Note 3 *supra*, at paragraph 15.

<sup>8</sup> Note 3 *supra*, at paragraph 5.

<sup>9</sup> Note 3 *supra*, at paragraph 8.

<sup>10</sup> Note 3 *supra*, at paragraph 9.

<sup>11</sup> Note 3 *supra*, at paragraph 10.

<sup>12</sup> Note 3 *supra*, at paragraph 11.

<sup>13</sup> Note 3 *supra*, at paragraph 28.

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### **Deloitte Singapore's views**

The clarifications from the OECD Secretariat and IRAS are timely, and helped to provide certainty on relevant business and employee or personnel taxation issues arising from travel restrictions and quarantine requirements imposed by governments to contain the COVID-19 pandemic. The clarifications made are reasonable and in line with expectations, given that the cross-border or teleworking arrangements were not planned ahead by the businesses or employees.

However, from a Singapore corporate tax residence or PE perspective, there may be other situations that may not fall squarely within the conditions

imposed by the IRAS. E.g., if a company that is newly set-up in 2020 wishes to claim tax residency in Singapore for YA 2021 but is unable to hold board meetings in Singapore due to COVID-19 travel restrictions. We would hope that this may be considered favourably, with a relevant declaration by the directors of their intent to hold board meetings in Singapore.

### **Deloitte COVID-19 tax and fiscal measures resources**

You may find the following Deloitte resources of use in helping you to monitor the COVID-19 tax and fiscal measures across jurisdictions within your sphere of interest.

- a. Deloitte's Atlas COVID-19 Tax & Fiscal Measures Microsite contains high-level summaries of COVID-19 measures that have been announced by governments. The [page](#) shows reliefs and deferrals for direct, indirect and other taxes along with changes in tax administration practice designed to ease compliance for tax payers. You can view by country and tax type in the interactive map, and also create country comparisons. To request access to this resource, please complete the short online access request form that can be found [here](#).
- b. Deloitte has collaborated with Signal AI to develop a tax-intelligent news platform that produces daily alerts on COVID-19 initiatives. To complement the latest information concerning government tax and fiscal responses to the coronavirus, which are provided daily, a Weekly Topic Alert Digest has been created to be sent every Monday. Such Digest consolidates the daily Topic Alerts from the prior week into a single reference document. To register to receive Signal COVID-19 Topic Alerts, please send your name, organisation name and email address, along with a reference to COVID-19, to: [signal@deloitte.com](mailto:signal@deloitte.com).
- c. Other COVID-19 related resources can be found on Deloitte tax@hand, which contains global and regional resources (you may subscribe [here](#) or access the site and configure preferences [here](#)), and our at our [COVID-19 hub](#).

If there are any particular issues that you would like to discuss relating to COVID-19, please do not hesitate to contact your Deloitte service team.

### **Contacts**

Companies should assess and evaluate the potential impact of these proposed changes. Please contact either the listed contacts below or any member of the [Singapore Tax & Legal team](#).

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