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Singapore – tax – potential impact of COVID-19 on tax residency

In light of the COVID-19 pandemic, the Singapore Government took precautionary steps to control the spread of the virus, including entry restrictions and quarantine measures.

Unbeknownst to companies, these preventative steps and the correlative impossibility to convene management meetings in Singapore or to leave Singapore, as the case may be, could have consequences on a company tax residency.

While Singapore tax residency may not rank particularly high on Companies' checklist of things to consider, the downsides of failing to obtain a COR or being deemed to have a permanent establishment could be significant.

Singapore incorporated companies

➤ Tax residency of a Singapore incorporated company

In Singapore, the tax residency of a company is determined by reference to where the business is controlled and managed.

Generally, a company will be considered to be a Singapore tax resident for a particular Year of Assessment ("YA") if the control and management of its business was exercised in Singapore in the preceding calendar year.

"**Control and management**" is the making of decisions on strategic matters, such as those on company policy and strategy. Where the control and management of a company is exercised is a question of fact. Typically, the **location of the company's Board of Directors ("BoD") meetings**, during which strategic decisions are made, is a key factor in determining where the control and management is exercised. As such, BoD meetings should be properly documented in minutes mentioning the location, name of attendees and detailed description of the substantive matters that were discussed.

Where BoD meetings are conducted via conference call/ videoconferencing, the tax residency of a company will usually be considered based on the location of the majority of directors. The place where an Annual General Meeting is held is not relevant.

Singapore tax resident enjoy the following benefits:

- 1 Tax benefits provided under Double Tax Agreements ("DTA") between Singapore and other jurisdictions;
- 2 Tax exemption on foreign-sourced dividends, foreign branch profits and foreign-sourced service income under Section 13(8) of ITA;

- 3 Foreign tax credits; and/or
- 4 Tax exemption scheme for new start-up companies.

➤ **Foreign-owned investment companies**

Foreign-owned investment holding companies, with purely passive sources of income or receiving only foreign-sourced income are generally regarded as non-residents because these companies usually act on the instructions of its foreign companies/shareholders.

A “foreign-owned company” is a company where 50% or more of its shares or voting power are held or controlled by foreign companies/shareholders.

However, a foreign-owned company may still be treated as Singapore tax residents if it is able to satisfy IRAS that certain conditions have been met and show that the control and management is exercised in Singapore and that it has valid reasons for setting up an office in Singapore.

➤ **Certificate of Residence (“COR”)**

To certify that it is a tax resident of Singapore or/and claim tax benefits under the relevant DTA, a company needs to apply to the Inland Revenue Authority of Singapore (“IRAS”) for a COR.

➤ **Impact of COVID-19 pandemic on corporate substance**

Border control measures imposed on travelers in the context of the COVID-19 pandemic have prevented several companies from conducting physical board meetings in Singapore, thereby jeopardising their corporate substance.

In order to diffuse concerns, IRAS made announcements to specifically address this:

- Where a company cannot hold its board meetings in Singapore due to the travel restrictions relating to COVID-19, IRAS is prepared to consider the company as a Singapore tax resident for YA 2021 and/or YA 2022 if:
 - a the company is/was a Singapore tax resident for YA 2020;
 - b there are no other changes to the economic circumstances of the company; and
 - c the directors of the company attend the board meeting held outside Singapore or the meeting is held via electronic means (e.g. via video-conferencing, tele-conferencing, etc.) due to the directors being temporarily restricted in their travel as a consequence of COVID-19.
- Conversely, IRAS will consider a company as a non-resident for YA 2021 and/or YA 2022, provided it meets all the following conditions, if:
 - a the company is not a Singapore tax resident for the immediate preceding YA;
 - b the company holds its board meetings in Singapore due to the travel restrictions relating to COVID-19; and
 - c there are no other changes to the economic circumstances of the company.

Foreign companies

Travel restrictions may also result in employees of foreign companies having to remain in Singapore. IRAS will consider that such presence does not result in the creation of a permanent establishment in

Singapore for the foreign company for YA 2021 and/or YA 2022, provided it meets all the following conditions:

- a. the foreign company does not have a permanent establishment in Singapore for the immediate preceding YA;
- b. there are no other changes to the economic circumstances of the company;
- c. the presence of the employees in Singapore is due to travel restrictions relating to COVID-19 and their physical presence in Singapore up to 30 June 2021 is temporary;
- d. the activities performed by the employees during the presence would not have been performed in Singapore if not for the travel restrictions relating to COVID-19; and
- e. these employees will leave Singapore as soon as they are able to do so, following the relaxation of travel restrictions relating to COVID-19.

To support the claim that there is no permanent establishment in Singapore, the company should keep relevant documentations and records, and to provide the relevant information to IRAS upon request.

For any additional information, contact [Lisbeth Lanvers-Shah](#) or [Olivier Monange](#).

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