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## Corporate tax residency in Singapore & Covid-19

### Corporate tax residency - general application

The tax residency of a company determines which country has taxing rights, potentially, on its worldwide income and is therefore imperative it is understood. The place of incorporation does not necessarily indicate tax residency, it is the place of effective management and control of the company which normally takes precedence. The place of management and control refers to where the highest level of control takes place (rather than the day-to-day management), this is often considered to be where the board of directors perform their duties.

In **Singapore**, it is the place of management and control which will be the determinative factor although this is generally where the **board of directors meet for strategic decision making**, additional factors set out below are also considered:

- Presence of other related companies (tax resident or with business activities) in Singapore; or
- Receipt of support or administrative services from a related company in Singapore; or
- Having at least one director based in Singapore who holds an executive position and is not a nominee director; or
- Having at least one key employee (e.g. CEO, CFO, COO) based in Singapore.

In the case of a foreign-owned investment holding company in receipt of only passive or foreign sourced income, the IRAS considers the company to be tax resident outside Singapore by virtue of the company acting on the instruction of the foreign owners. In such cases, while demonstrating tax residency in Singapore can prove more challenging, it is not impossible.

### Singapore corporate tax residency - COVID-19

Where a company is not able to hold its Board of Directors meeting in Singapore due to the travel restrictions relating to COVID-19, IRAS is prepared to consider the company as a Singapore tax resident for Year of Assessment (YA) 2021\*, provided it meets all the following conditions:

- a) the **company is 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 have to **attend board meetings via electronic means** or outside Singapore due to the directors being temporarily restricted in their travel as a consequence of COVID-19.

Conversely, where a company is not a tax resident of Singapore for YA 2020, IRAS will continue to consider the company as a non-resident for YA 2021, provided it meets all the following conditions:

- a) the company has to hold its Board of Directors meeting in Singapore due to the travel restrictions relating to COVID-19; and
- b) there are no other changes to the economic circumstances of the company.

To support the claim that the company should continue to be treated as a tax resident or non-resident of Singapore, 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 to provide the relevant information to IRAS upon request.

### Permanent Establishment

Employees of a foreign company may have to remain in Singapore due to travel restrictions relating to COVID-19. IRAS will consider such unplanned presence does not result in the creation of a permanent establishment in Singapore for the foreign company, provided it meets all the following conditions:

- a) the foreign company **does not have a permanent establishment in Singapore for YA 2020**;
- b) there are **no other changes to the economic circumstances** of the company;
- c) the **unplanned presence** of the employees in Singapore is due to travel restrictions relating to COVID-19 and their physical presence in Singapore is **temporary** (as a guide, generally not more than 183 days in year 2020); and
- d) the activities performed by the employees during the unplanned presence **would not have been performed in Singapore if not for the travel restrictions**.

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

\*YA 2021 refers to the year ending in 2020 so for a 31 December year end, the year in question is the year ended 31 December 2020.