

## Covid-19 and Possible Consequences For The Tax Residency of Companies



As the world is battling against a coronavirus pandemic called Covid-19, countries around the world have implemented various measures to prevent a further spread. Amongst others, countries have implemented travel restrictions, closed their borders and billions of people around the world are in lockdown. Covid-19 has a significant impact on the global economy and will likely result in a global recession as the spread continues.

Many industries are affected and companies have to take extraordinary decisions and actions against the impact of Covid-19. These extraordinary decisions may include decisions on company policy and strategy. From a Singapore income tax perspective, such decisions may on the one hand affect the Singapore income tax treatment of a tax resident company and could result in a less preferential treatment. On the other hand, a non-tax resident company may face increased filing requirements and tax obligations in Singapore if the company would be treated as tax resident in Singapore.

## 1. Tax Residency in Singapore

In order for a company to be treated as tax resident in Singapore for a particular Year of Assessment, its “control and management” must be exercised in Singapore during the preceding calendar year. Control and management does not refer to a company’s day-to-day business but covers decisions of strategic matters, such as decisions on company policy and strategy. Where the control and management is exercised is a question of fact.

Generally, the body of a Singapore company that has decision making powers is considered to be its board of directors. The place where the board of directors physically gets together to discuss and decide on matters such as the company’s business operations, company policy and strategy, etc. is regarded as the place where control and management is exercised.

In case some of the directors or decision makers are not resident in Singapore, it is important to hold physical board meetings in Singapore on a regular basis and to minute them. Although it is not necessary to hold such physical board meetings in Singapore from a strict corporate legal point of view, from a tax point of view this is crucial to be able to proof to the Inland Revenue Authority of Singapore (“IRAS”) that Singapore is the place where control and management is exercised, even if some of the directors reside outside of Singapore.

## 2. Covid-19 Consequences

Whereas a company must exercise its “control and management” in Singapore to be treated as a tax resident in Singapore, globally implemented Covid-19 measures may not allow a non-resident director or decision maker of a Singapore company to travel to Singapore in order to be physically present in Singapore when strategic decisions are made. Consequently, the Singapore company may not be able to proof to the IRAS that its place of control and management is in Singapore during this period of time and may therefore not be treated as a tax resident by the IRAS.

If a company is not treated as a tax resident of Singapore it is treated as a non-tax resident, accordingly. In our experience, such treatment will highly likely result in a higher tax burden compared to the tax burden of a tax resident company. Although the difference for income generated in Singapore is marginal, the difference for foreign-sourced income can be

quite significant. In addition, reduced withholding tax rates based on double tax treaties may not be granted and the risk of double taxation of income arises if the company is considered a non-tax resident of Singapore.

## 3. IRAS’ New Guidance

The IRAS’ point of view generally remains that the tax residency of a company in Singapore requires that the control and management is exercised in Singapore. A company should be able to substantiate that the strategic decisions are made in Singapore. However, the IRAS has published an administrative concession on 6 April 2020 due to the Covid-19 situation and various travel restrictions currently in place.

The IRAS is prepared to consider a company as tax resident for Year of Assessment 2021 (calendar year 2020) even if that company may not be able to hold physical board meetings, during which strategic decisions are made, in Singapore because of travel restrictions in place to counter Covid-19. According to the administrative concession the following conditions must all be met:

- the company was a Singapore tax resident for Year of Assessment 2020 (calendar year 2019);
- there are no other changes to the economic circumstances of the company<sup>1</sup>; and
- the directors of the company have to physically attend the board meeting(s) held outside Singapore or attend the board meeting(s) via video- or tele-conferencing if the directors are restricted in their travel as a consequence of Covid-19.

Especially with respect to the last bullet point above, we strongly recommend to have proper documentation in place to show that board meetings have been held, who attended the meetings and what decisions have been taken during those board meetings.

On the other hand, the IRAS also clarified that a non-tax resident company for Year of Assessment 2020 (calendar year 2019) will be considered a non-tax resident for Year of Assessment 2021 even if that company has to take strategic decisions during board meetings held in Singapore or in case

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<sup>1</sup> Those circumstances 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.

directors who are physically present in Singapore attend the board meeting via video- or tele-conferencing because of the current travel restrictions, provided that there are no other changes to the economic circumstances of that non-tax resident company.

#### 4. Conclusion and Recommendations

In light of the evolving Covid-19 situations restrictions are implemented globally. Companies may have to make extraordinary decisions on their policies and strategies. Those decisions will highly likely qualify as strategic decisions from a Singapore income tax perspective and may affect the tax residency status of the company in Singapore accordingly. If such situation is applicable to a company under the current Covid-19 circumstances, we recommend to verify whether the company could successfully continue to claim its status as a Singapore tax resident for Year of Assessment 2021 and to very carefully document the reasons for taking strategic decisions outside of Singapore (e.g. via videoconference) in the minutes of the board meeting(s). Companies may be requested to provide those documents to the IRAS.

The new guidance published by the IRAS is a welcome clarification and concession given the current challenges for businesses around the world. This guidance is also in line with the recent guidance on the impact of Covid-19 and the application of double tax treaties published by the Organisation for Economic Cooperation and Development.<sup>2</sup>

Should you require any clarification or assistance with properly documenting your current situation, it would be our pleasure to discuss this further with you.

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<sup>2</sup> OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis, 3 April 2020.



#### Your Contacts



##### David Martiny

Lawyer and Tax Advisor (Germany)  
Partner  
Singapore  
P +65 6408 8000  
[david.martiny@luther-lawfirm.com](mailto:david.martiny@luther-lawfirm.com)



##### Eline van Dijke-Nouwen

Tax Advisor,  
Accredited Tax Practitioner,  
Tax Manager  
Singapore  
Phone: + 65 6408 8030  
[Eline.van.dijke@luther-services.com](mailto:Eline.van.dijke@luther-services.com)



##### Yves Van Brussel

Lawyer (Belgium)  
Senior Associate  
Singapore  
P +65 6408 8000  
[yves.van.brussel@luther-lawfirm.com](mailto:yves.van.brussel@luther-lawfirm.com)

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