



TaXavvy

12 May 2020 | Issue 35-2020

IRB's FAQ on international tax issues due to COVID-19 travel restrictions



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IRB's FAQ on international tax issues due to COVID-19 travel restrictions ("FAQ")

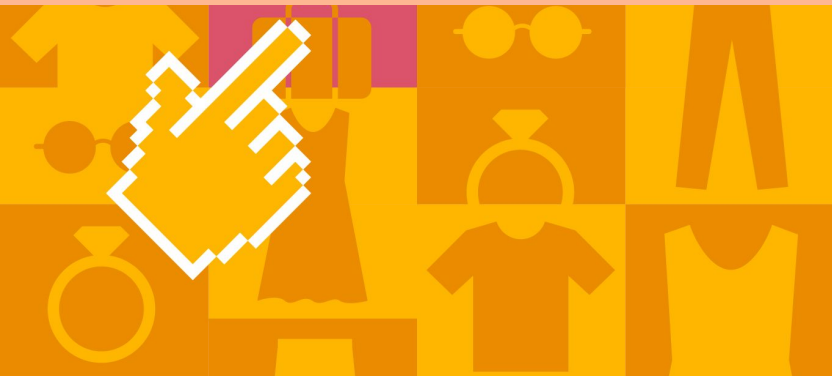
Travel restrictions imposed by governments around the world to contain the COVID-19 pandemic have raised various tax concerns. The IRB has issued the FAQ to provide guidance on the following tax issues arising from employees being stranded either in Malaysia or outside of Malaysia from a Malaysian tax standpoint:

- Individual tax residence
- Cross border employment income
- Corporate tax residence
- Permanent establishment

The FAQ can be downloaded from the IRB's website www.hasil.gov.my (Homepage > Quick links > Movement Control Order & Economic Stimulus Package).

Individual tax residence

Issue	FAQ reference
<p>A travel restriction inadvertently prolongs either an individual's physical presence in or absence from Malaysia. This impacts the tax residence of such an individual as his/her tax residence is determined based on the number of days that the person is physically present in Malaysia.</p> <p>The IRB has stated that a person's temporary presence in/ absence from Malaysia due to COVID-19 travel restrictions will not affect his/her Malaysian resident status as follows:</p> <ul style="list-style-type: none">• In the case of Malaysian resident who is outside of Malaysia, the period of temporary absence from Malaysia because of COVID-19 travel restrictions shall be taken to form part of his/her period or periods in Malaysia for the purpose of tax residence.• In the case of a non-resident who is in Malaysia, the period of temporary presence in Malaysia because of COVID-19 travel restrictions shall not be taken to form part of his/her period or periods in Malaysia for the purpose of tax residence. <p>Such individuals are required to keep relevant documentation and records (e.g. travel documents, local authority travel restrictions guideline etc.), and to provide the relevant information to the IRB upon request.</p>	<p>Items 1 and 2</p>



Cross border employment income

Issue	FAQ reference
<p>Travel restrictions give rise to situations where employees have to temporarily work from the country which they are currently located as opposed to the country which they would normally exercise their employment. This impacts the taxability of such employees' employment income. Employment income is generally treated as derived from Malaysia and hence subject to Malaysian income tax when:</p> <ul style="list-style-type: none"> • The employment is exercised in Malaysia, or • In the case where the duties are carried out outside of Malaysia, it is incidental to the exercise of an employment in Malaysia. <p>The IRB has provided its feedback on the following questions:</p> <p>1. Before the MCO, I commute daily to Singapore from my home in Johor Bahru for work. Due to the MCO, I am temporarily working from home in Johor Bahru. Is my income taxable in Malaysia?</p> <p>The IRB will consider the employment income as not derived from Malaysia and hence is not subject to Malaysian income tax if the following conditions are met:</p> <ul style="list-style-type: none"> • There is no change in the contractual terms governing the employment overseas before and after return to Malaysia; and • This is a temporary work arrangement due to COVID-19 travel restrictions. <p>2. I am currently temporarily working from overseas due to COVID-19 travel restrictions. Is my income taxable in the current location?</p> <p>If you would normally exercise your employment in Malaysia and is forced to work temporarily outside of Malaysia because of COVID-19 travel restrictions, you are regarded to be exercising your employment in Malaysia. The income is deemed derived from Malaysia. Therefore, the income is still taxable in Malaysia. You may be subject to taxation in the locality where you are temporarily present if no special tax measures for COVID-19 are provided by that locality's tax authority. If you are in a state that has a tax treaty with Malaysia, you will not be taxable if you are present for less than 183 days. If you are in a state that has no tax treaty with Malaysia, you might be subject to taxation. In such case, you may apply for credit relief under the Income Tax Act 1967.</p>	<p>Items 6 and 7</p>

Cross border employment income (cont'd)

Issue	FAQ reference
<p>3. I am a non-resident individual and currently working from Malaysia because of COVID-19 travel restrictions.</p> <p>IRB is prepared to consider you as not exercising an employment in Malaysia for the period of your temporary presence due to COVID-19 travel restrictions and have been working remotely from Malaysia for your overseas employer during your temporary presence in Malaysia if the following conditions are met:</p> <ul style="list-style-type: none"> • The period of your temporary presence is for a period of not more than 60 days • The work you have done during your temporary presence is not connected to your assignment in Malaysia and would have been performed overseas if not for COVID-19 travel restrictions. <p><u>Comment</u></p> <p>In the case of an employment exercised in Malaysia by a non-resident for not more than 60 days, the income is currently exempted under Paragraph 21 of Schedule 6 of the Income Tax Act 1967.</p> <p>It is hoped that the IRB will consider extending the above to include period of temporary presence in Malaysia beyond 60 days as travel restrictions may extend beyond 60 days.</p>	<p>Item 8</p>

Corporate tax residence

Issue	FAQ reference
<p>A company is treated as a Malaysian tax resident for a year of assessment if its management and control is exercised in Malaysia. In general, management and control of a company is treated as exercised in Malaysia when its board of directors meeting takes place in Malaysia. Travel restrictions due to COVID-19 may prevent such meetings from taking place in Malaysia, thus impacting a company's tax residence status. The IRB has provided its feedback to the following questions:</p> <p>1. My company is unable to convene a meeting of the Board of Directors (BOD) in Malaysia because of COVID-19 travel restrictions. Will this have an effect on the company's residence status in Malaysia?</p> <p>If your company is not able to convene its BOD meeting in Malaysia due to COVID-19 travel restrictions, IRB is prepared to presume that the company is a Malaysian resident, provided it meets all the following conditions:</p> <ul style="list-style-type: none"> • The company is a resident in the immediate previous year of assessment • There are no changes to the economic circumstance of the company • The directors of the company have to attend the BOD meeting held outside Malaysia (either physical meeting or via electronic means) due to COVID 19 travel restrictions. <p>2. My company convenes a meeting of the Board of Directors (BOD) in Malaysia because of COVID-19 travel restrictions. The company is not a resident in Malaysia and does not intend to seek residence status in Malaysia.</p> <p>If your company convenes its BOD meeting in Malaysia due to COVID-19 travel restrictions, IRB is prepared to presume that the company is a non-resident in Malaysia, provided it meets all the following conditions:</p> <ul style="list-style-type: none"> • The company has to hold its BOD meeting in Malaysia due to COVID-19 travel restrictions • There are no changes to the economic circumstance of the company. <p>Economic circumstances refers to 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.</p> <p>The company should keep relevant documentations 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 IRB upon request.</p>	<p>Items 3 and 4</p>

Permanent establishment

Issue	FAQ reference
<p>Under double tax treaties concluded by Malaysia with its treaty partners, a company is only subject to Malaysian tax on its business profits provided that it carried out its business through a permanent establishment (PE) in Malaysia. The term PE includes a fixed place of business through which the business of an enterprise is wholly or partly carried on. This includes a fixed place where employees of a company work from. Travel restrictions due to COVID-19 may inadvertently cause employees to temporarily work in a place in Malaysia, thus impacting the company's PE status. The IRB has provided its feedback on the following question:</p> <p>1. My company is not resident in Malaysia. Does the temporary presence of my employees or personnel in Malaysia due to COVID-19 travel restrictions lead to the creation of a PE in Malaysia?</p> <p>IRB will consider that such temporary presence of employees or personnel does not result in the creation of a PE in Malaysia, provided it meets the following criteria:</p> <ul style="list-style-type: none"> • Your company does not have a PE in Malaysia before the existence of COVID-19 travel restrictions; • There are no other changes to the economic circumstances of the company; • The temporary presence of the employees in Malaysia is solely due to travel restrictions relating to COVID-19; and • The activities performed by the employees during their temporary presence would not have been performed in Malaysia if not for the COVID-19 travel restrictions. <p>Economic circumstances refers to 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.</p> <p>The company should keep relevant documentations and records and to provide the relevant information to IRB upon request.</p>	<p>Item 5</p>

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