

## CYPRUS TAX NEWS

### Application of tax residency and permanent establishment (PE) during the COVID-19 crisis

On 27<sup>th</sup> October 2020, the Cyprus Tax Department (CTD) issued an Implementing Guideline 4/2020 (IG 4/2020) to clarify the application of Article 2 of the Income Tax Legislation (ITL) relating to tax residency and permanent establishment (PE). The purpose of the IG 4/2020 is to provide specific tax relaxation to taxpayers affected by the global measures taken to prevent the spread of COVID-19. Among others, the main measures taken are the travel restrictions, home self-isolation, working from home arrangements, suspension of contracts of employment etc.

The guidance issued by the CTD follows a similar non-binding guidance issued by the Organisation for Economic Co-operation and Development (OECD), OECD's Guidance.

The Implementing Guideline 4/2020 clarifies that due to the above global restrictions:

- the period of **21 March 2020 to 9 June 2020** should be considered as a **"frozen period"** (i.e. "objective inability to move period" due to COVID-19 global restrictions). Such period should not be taken into consideration for the purpose of determining the tax residency and/or the existence of a PE (analysed in more detail below);
- the taxpayer has the option to choose to apply the relaxations offered by the IG 4/2020 or to choose to apply the "standard" provisions of the relevant ITL;
- in cases where, the application of IG 4/2020 is chosen then, sufficient supporting documentation should be made available to be presented to the CTD;
- The said period could be extended before 21 March and/or after 9 June 2020, with the associated evidence and supporting documentation proving that the individual was not able to travel;
- The IG 4/2020 does not take into consideration possible different tax treatments of other jurisdictions.

The key features of the IG 4/2020 are provided below:

#### Tax residency of individuals (Article 2 of the ITL "183 days rule" and "60 days rule")

In case an individual was physically present in Cyprus due to COVID-19 restrictions but would otherwise be present in another country, the "frozen period", **will not** be taken into account for the purpose of calculating the number of days in Cyprus.

In case an individual was physically present abroad due to COVID-19 restrictions but would otherwise be present in Cyprus, the "frozen period", **will** be taken into account as a period in Cyprus for the purpose of calculating the number of days in Cyprus.

#### Tax residency of legal entities

A non-Cyprus tax resident company will not be considered to establish tax residency in Cyprus, as a result of the presence of its staff, employees under a contract of service, directors, representatives in Cyprus merely due to COVID-19 related restrictions.

The tax residency of a **Cyprus company** will not be affected by the inability of the directors to travel to Cyprus to attend a Board of Directors meeting merely due to COVID-19 related restrictions.



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### Permanent Establishment Matters

The IG 4/2020 states that the COVID-19 pandemic restrictions will not result in any changes for the purpose of determining the creation of a PE and particularly clarifies the following:

#### a) Temporary presence in Cyprus

The activities exercised/duties performed in Cyprus by individuals who are physically present in Cyprus merely due to COVID-19 restrictions, (whereas under normal circumstances they should have been abroad), will not lead to the creation of a PE in Cyprus.

#### b) Temporary presence outside of Cyprus

The temporary period during which individuals remained abroad due to COVID-19 restrictions, (whereas under normal circumstances they should have been in Cyprus), should not be taken into account when determining the creation of a PE in Cyprus. In other words, it will be considered as they have carried out their activities/duties in Cyprus.

### Article 8(23) of the Income Tax Legislation - 50% exemption

It is clarified that in cases where an individual suffers a reduction in his/her emoluments from employment in Cyprus merely due to reasons of COVID-19 (i.e. due to measures taken by the Cyprus Government or measures taken by their employers) the exemption of 50% will still apply to the particular individual provided that, supporting documentation is available (i.e. the annual emoluments from employment in Cyprus reduced to less than €100,000).

### Article 36(5) of the Income Tax Legislation

It is clarified that in cases where an individual was unable to travel abroad for offering his/her salaried services to his/her non Cyprus tax resident employer or to a PE of a Cyprus employer outside Cyprus and thus, he/she is unable to meet the 90 days rule merely due to COVID-19 travel restrictions then, the tax treatment of the said emoluments should not be affected. It is important to note that the CTD will take into consideration the exact circumstances and also the practice followed during the previous years.

It is specified that each case will be considered separately and will be examined based solely on its own actual facts and circumstances.