

OECD analysis of Tax Treaties and the impact of Covid-19 on:

Permanent Establishments

- In order for a home office to be considered a PE, it must have a **certain degree of permanency** and be at the disposal of an enterprise.
- **A PE should not arise when the change of the employee's location is due an exceptional and temporary situation.** The same approach applies for **employees or agents** working in another country as a result of COVID-19 measures and who currently habitually sign contracts on behalf of the employer. **Construction site PEs do not cease to exist due to temporary interruptions** caused by COVID-19 measures. Such interruptions are to be assimilated to interruptions caused by shortage of material or labour difficulties.

OECD Secretariat suggests that the COVID-19 measures taken by governments should not have any impact on the tax status of individuals, employers or companies since the COVID-19 crisis represents an unprecedented and exceptional circumstance amounting to *force majeure*.

Tax residence status of companies

- It is unlikely that the COVID-19 measures will create any change in residence for companies since the travel restrictions and relocations of the company's senior executives constitute exceptional and temporary measures **that should not impact the company's usual and ordinary place of effective management.**

Tax treatment of cross-border workers

- According to most of the double tax treaties an employment remuneration is only subject to tax in the employee's state of residence unless the employment is performed in another State and the employee has worked for more than **183 days** of the year in the source state and the employer is either resident or has a PE in the source state bearing the remuneration.
- Most of **double tax treaties** concluded between countries provide for a taxation in the state where the employment is effectively exercised and **may contain limits on the number of days cross-border workers may work outside their jurisdiction of employment (e.g. in their residence country)**; this is the case for double tax treaties signed between Luxembourg and Belgium, France and Germany.
- Luxembourg has agreed with its neighbouring countries to **temporarily suspend the normally applicable thresholds for cross-border workers.**

Change of individuals' residence status

- Even if an individual may be considered as **tax resident under domestic laws** by virtue of the fact that he has exceeded a certain number of days in that jurisdiction, **that individual should not be considered resident for the purposes of applying a tax treaty** since such temporary dislocation is attributable to extraordinary circumstances.

While the OECD's publication has **no formal legal status**, it provides nonetheless **valuable guidance for countries and taxpayers.**