



COVID-19 Global Mobility update

30 April - 05 May 2020

Dear all,

Please find below our most recent Mobility related global updates specifically related to the COVID-19 crisis and current guidance or measures that different countries are putting into place.

If you have any questions on below, please don't hesitate to reach out to us.

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Combating COVID-19 with resilience

[Visit our Deloitte COVID-19 webpage](#) to see a collection of Global Deloitte insights to help businesses manage and mitigate the risk associated with COVID-19.

OECD – Permanent Establishment and related considerations due to workers stranded as a result of COVID-19.

Introduction

The Organisation for Economic Co-operation and Development (OECD) has provided guidance related to potential cross-border corporate taxation issues triggered by employees stranded and performing services in non-employment countries as a result of the COVID-19 crisis. Included in the OECD guidance are recommendations on the implications of the COVID-19 crisis on the creation of permanent establishment (PE) and concerns related to corporate residency, and an OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis.

A link to the OECD's recommendations and analysis may be found [here](#).

OECD observations and recommendations

The OECD Center for Tax Policy and Administration (CTPA) drafted guidance which acknowledges that as a result of travel restrictions, many workers are unable to physically perform their duties in their country of employment and as a result may be tele-working from another jurisdiction. Such conditions give rise to the concern that a company has created

a PE in that other jurisdiction, and the scope and duration of employee activities could trigger new entity filing requirements and potentially new tax obligations. The OECD provided several examples of circumstances that corporations and governments should consider when evaluating corporate residency and PE.

OECD examples

Until specific country guidance is published with respect to COVID-19, the scenarios included in the OECD's recommendations and analysis yield some learning and insight for parties seeking to navigate the complexities related to cross-border work and related PE considerations for employers.

Two issues noted by the OECD are described below:

- (1) Impact to the determination or creation of a PE resulting from activities being performed in a country as a result of COVID-19
- (2) Impact to the residency status of a company as a result of change in the "place of effective management" due to the displacement of key executives

Note: In the treaty context, state means the jurisdiction(s) in question; below state and country are used interchangeably.

PE determination considerations within the context of COVID-19

The OECD analysis reviewed the following situations:

- **Home Office:** In general, a PE should have a "degree of permanency *and* be at the disposal of the enterprise" (emphasis added). Where an individual is working from home as a result of COVID-19, they are typically doing so at the directive of a government under force majeure circumstances. The condition is likely to be temporary and it is the government, not the company, that has required the employee to conduct business from their home. Therefore, it is unlikely that either condition for a PE would be met. The OECD does note that their guidance is predicated on the basis that teleworking

from home does “...not become the new norm over time”.

- **Agency PE:** The OECD specifically looks at whether the activities of an employee who habitually concludes contracts and is temporarily working from home for a non-resident employer, could give rise to a dependent agent PE. The OECD analysis focuses on the “habitual” requirement providing interpretations based on Treaty Commentary from 2014 and 2017, noting that the employee presence in the non-resident country is likely to be considered merely transitory and therefore unlikely to be considered habitual if force majeure caused the employee work circumstances.
- **Constructions site PE:** The OECD notes that activities on construction sites are temporarily being interrupted due to COVID-19 and in general these temporary interruptions should be included in determining the life of a site and will therefore affect the PE determination.

Company residence and place of effective management:

The OECD reviews concerns regarding a change in a company’s tax residency, or the creation of a dual residency, due to the emergence of a new “place of effective management” as a result of key executives’ inability to relocate or travel due to COVID-19. The OECD notes that as the circumstances are transitory, the executive should not be considered to meet the standard of “usually” carrying on their activities from the location in which they are stranded. The application of tie-breaker provisions should resolve conflicts arising from executive activity in a non-resident country, and where such provisions are not determinative, the parties could rely on competent authority procedure.

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Deloitte’s view

The OECD guidance is not specific to any country and does not impact the laws in any particular country. However, the guidance does serve to clarify considerations related to several common stranded employee work patterns. The OECD encourages countries to work together to alleviate unplanned tax implications and mitigate potential new tax burdens that

arise due to the crisis. To this end, the analysis specifically makes mention of recent guidance from tax authorities in the United Kingdom, Ireland, and Australia which all address the treatment of days spent in their respective country as a result of COVID-19 circumstances.

The guidance also highlights that Treaty applications cannot resolve situations where a treaty does not apply or where a country's domestic laws (including subdivision laws within a country such as states in the US) may contain a lower threshold for determining corporate residency and/or PE. As a result, country tax administrators are "... encouraged to provide guidance on the application of domestic law threshold requirements... to minimise or eliminate unduly burdensome compliance requirements for taxpayers in the context of the COVID-19 crisis".

As noted in our prior alert, the guidance also reveals a range of considerations that companies should be aware of, such as:

- Work patterns that include non-Treaty country combinations could also give rise to corporate taxation concerns,
- Recognition that not all Treaties align with the OECD Model Treaty upon which the guidance was based, and
- Conditions may need to be in place to rely on the "force majeure" concept upon which some of the OECD guidance was based.

As employers navigate their evolving compliance obligations, they are likely to focus on high exposure scenarios such as non-Treaty country combinations or PE exposures in high corporate tax rate jurisdictions. In addition, companies should consider careful application of treaty positions and consistent monitoring of jurisdiction-specific relief mechanisms.

Hong Kong - Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No.2) Regulation 2020 gazetted

What is the change?

The Government has published the Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No.2) Regulation 2020 (the Amendment Regulation), which will commence at 12.00 a.m. on 29 April 2020.

Under the Amendment, the expiry date for the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) has been extended to 7 June 2020.

The Amendment also allows for broadening the exemptions of person or category of persons from the compulsory quarantine arrangement. Specifically, the Amendment Regulation will further empower the Chief Secretary for Administration to exempt persons fulfilling the following criteria from compulsory quarantine (including all persons arriving from the Mainland, Macao, and Taiwan):

- a. Persons who need to enter Hong Kong in receiving or providing nursery, kindergarten, primary, or secondary education at any school registered under the Education Ordinance (Cap. 279) in Hong Kong or for the safe travelling of these persons for the abovementioned purpose, including cross-boundary students and related personnel and service providers.
- b. Persons whose travelling is necessary for purposes relating to manufacturing operations, business activities, or the provision of professional services in the interest of Hong Kong's economic development.

Details on the exemption arrangements (including applications for exemption) will be announced in due course. Exempted persons will be subject to medical surveillance by the Department of Health (DH) during their stay in Hong Kong, and will be required to wear masks and report their daily temperatures to the DH.

The Director of Health has also been empowered to, at appropriate time, cancel the quarantine orders against persons arriving from the Mainland or Macao if they can fulfil certain criteria (including producing a certificate of completion for a quarantine period of not less than 14 days in the Mainland or Macao) and are tested negative for COVID-19. The relevant authorities are currently discussing these measures. For the

initial stage, the focus will be on the joint prevention and control of COVID-19 with the Guangdong and Macao authorities. Details of the arrangement, including the exact date of implementation, will be announced later.

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New Zealand - Alert Level 3

What is the change?

New Zealand moved to Alert Level 3 at 11.59 p.m. on Monday, 27 April 2020. It will stay in Alert Level 3 for two weeks, before Cabinet makes further decisions on 11 May 2020.

Under Alert Level 3, people must continue to stay in their household bubbles whenever they are not at work, school, buying the groceries, or exercising, but can expand this to reconnect with close family/whānau, bring in caregivers, or support isolated people.

In addition, those who were in the wrong place when the restrictions came into place, and need to get home, can now move throughout New Zealand to do so. They can move once, and only in one direction. If questioned, they should be able to clearly explain the purpose of the travel and how it complies with the Alert Level 3 restrictions. They should also provide documentation, such as proof of the residential or business address they will be travelling to, or a letter from their employer. More information on travelling during Alert Level 3 can be found [here](#) , and detailed transportation information can be found [here](#).

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Thailand - Permission for certain groups of foreigners to remain in the Kingdom

What is the change?

The [announcement](#) by the Ministry of Interior dated 24 April 2020 brings an amendment to their previous announcement on 7 April 2020, which provided relief measures to foreigners whose 90-day reports and visas were due to expire between 26 March 2020 and 30 April 2020.

Under the latest announcement, both temporary (tourist, transit, national waiver visa, visa on arrival), and long-term Non-Immigrant visa holders (permitted under the Immigration Act, Petroleum Act, Investment Promotion Act, and the Industrial Estate Authority Act) can hold off their 90-day reporting and visa extension applications until 31 July 2020 without penalty. Applications will not be required, and overstayers will be exempted.

Nevertheless, long-term Non-Immigrant visa holders whose visas are due to expire between 1 May 2020 and 31 July 2020 may want to consider applying for their visa extensions as usual in order to avoid delays when the volume of applications increase after 31 July 2020. They should also take into consideration their work permit renewal timelines, as a valid Non-Immigrant visa may be needed to support work permit renewal applications under the purview of the Ministry of Labour's Employment Department.

All visas or 90-day reports which expire or are due on or after 31 July 2020 must be promptly extended or reported within a time period to be announced by the Thai Immigration Bureau. Failure to do so may result in penalties under the Immigration Act.

Foreigners who are Permanent Residents and those holding Border Passes are no longer exempted under this latest announcement. Therefore, foreigners who are Permanent Residents and currently outside Thailand must return to Thailand before the expiry of their re-entry permits, or as soon after 30 April 2020 as possible (under the exemption provided in the previous 7 April 2020 announcement). However, given the temporary ban on all international flights until 31 May

2020, a set of mitigation measures is expected to be announced by the Ministry of Interior to address this issue. Foreigners holding Border Passes must also leave the country within 7 days from 30 April 2020 when borders re-open. Failure to do so may result in penalties under the Immigration Act.

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Thailand - Extension of temporary ban on all international flights to Thailand until 31 May 2020

What is the change?

The ban on international passenger flights to Thailand will be extended from 1 May 2020, 5.00 p.m. (UTC) to 31 May 2020, 5.00 p.m. (UTC). All flight permits granted for this period will be cancelled.

The ban does not apply to state or military aircraft, emergency landing, technical landing without disembarkation, humanitarian aid, medical and relief flights, repatriation flights, and cargo flights. Nevertheless, persons on board these aircraft will be subjected to the measures defined under the communicable disease law, such as a 14-day state quarantine, and regulations under the Emergency Decree on State of Emergency.

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Thailand - Safety measures to be implemented when domestic flights resume on 1 May 2020

What is the change?

The Civil Aviation Authority of Thailand had a meeting with representatives from 20 airlines on 23 April 2020 to discuss the safety measures that need to be implemented when domestic flights resume on 1 May 2020.

All airlines will be required to implement strict measures during the check-in, boarding, and de-boarding processes. Passengers will be required to bring their own face masks, and must wear it for the duration of the flight. Flights with a duration of 90 minutes and over will also have a special zone set aside for passengers who show symptoms.

Passengers should contact their airlines directly to determine available routes. To view the full list of safety measures, please click [here](#).

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South Africa - Government to begin easing nationwide lockdown May 1

What is the change?

The South African government will begin relaxing the strict nationwide COVID-19 lockdown on May 1 with a phased approach to allowing some businesses to reopen, but the borders will remain closed and domestic travel, as well as nonessential activities, will remain curtailed.

Certain businesses will be permitted to reopen but only one-third of workers will be allowed to return to work, according to comments by President Cyril Ramaphosa in a televised address last week. The energy sector and refineries are among the industries allowed to resume operations. Restrictions may

be specific to individual provinces, districts and metropolitan areas, as separate alert levels will be issued for each locality.

- **Implementation time frame:** May 1 and onward.
- **Business impact:** Some businesses will be able to resume, but much activity will remain restricted, such as travel between provinces and large gatherings. The government is encouraging businesses that are operating remotely to continue doing so.

The guidelines for the May 1 phase allow for South Africans to return but they must be quarantined for 14 days before residing with family or going to work. Postal services, courier services and public transportation will resume. Hotels and other guest accommodations remain closed. Recreational visits and crowds are prohibited. Individuals may go outdoors for exercise but are restricted to certain hours and must keep social distancing. A curfew of 8 pm to 5 am is in place, except for those who have a permit.

Petroleum and other energy companies will be able to reopen, because of their importance to the South African economy. As with other countries, the COVID-19 situation is fluid, and the government is taking a cautious approach in reopening businesses selectively to revive the economy without sparking a new outbreak of the coronavirus.

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Kazakhstan - COVID-19: Visa-free travel for many foreign nationals suspended

What is the change?

Kazakhstan has suspended visa-free travel for nationals from 57 countries to mitigate the spread of COVID-19.

Key points:

- The unilateral visa-free regime has been suspended for nationals from 57 countries until Nov. 1. A list of the countries is [here](#).

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- After Kazakhstan's borders are opened, nationals from the 57 countries will be required to have a visa to enter the country.
 - At that time, new visas will only be issued to such nationals who have medical certificates demonstrating the absence of COVID-19. The medical certificate must be granted within 48 hours before applying for the visa at the consulate.

The visa-free travel suspension and visa application changes will impact the movement of people into Kazakhstan.

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For the latest country-specific travel restrictions and immigration information in relation to COVID-19, visit gowork.ges.deloitte to view Deloitte's Digital travel Map.

PERU – State of emergency extended second time

What is the change?

Peru has extended the national state of emergency for the second time to mitigate the spread of COVID-19.

Key points:

- The national state of emergency has been extended again from April 27 to May 10.
- The nationwide curfew from 6:00 p.m. to 4:00 a.m. remains in place, except for Piura, Tumbes, Lambayeque, Loreto and La Libertad, where it is 4:00 p.m. to 4:00 a.m. On Sundays, a home quarantine is in place for the whole country. Only one person per family is allowed to leave the home to obtain food, pharmaceuticals or handle financial matters from Monday to Saturday. During the state of emergency,

wearing facemasks is mandatory for individuals when they are on streets and roads.

The original state of emergency, which was declared in March, implemented a number of restrictions. International and domestic travel were suspended and borders were closed for entering and exiting the country for 15 days. Immigration offices and public-facing businesses, with some exceptions, were closed for the same amount of time. However, an initial extension of the state of emergency was declared in April to keep those measures in place until May 10.

The second extension, which keeps a variety of travel and immigration restrictions in place, will impact the movement of people into and out of Peru.

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Australia—Changes to main residence capital gains tax exemption from July 1, 2020

What is the change?

In December 2019, the Australian government passed legislation to **remove** the main residence Capital Gains Tax (CGT) exemption for most individuals who are foreign residents (for Australian tax purposes) on the sale date.

The new legislation allows a foreign resident to claim access to the exemption only if they meet the "life events" test, which requires:

- The individual to have been a foreign resident for less than six years at the point of sale; **and**

- The individual, their spouse, or their child aged under 18 years, had a terminal illness or died during that period, or the sale is as a result of divorce/separation.

The existing CGT exemption rules still apply if the owner returns to Australia and is an Australian tax resident on the sale date.

However, the new rules would apply to sales after 7:30 p.m. ACT (Australian Capital Territory) time on 9 May 2017 for homes acquired after that date.

Homes owned prior to that date will be affected only if sold **after 30 June 2020** (which is a 12-month extension from the 2017 announcement).

What does the change mean?

The current economic climate may mean that foreign resident individuals, who wish to sell their main residence, could find it challenging to sell prior to the 30 June 2020 deadline (for property held prior to 9 May 2017).

Those individuals who are Australian tax residents at the point of sale will not be impacted by the rule change.

If an individual is not a tax resident at the time of sale, they cannot claim the CGT exemption unless they meet the "life events" requirements. This would also prevent the market value "deemed" CGT cost base adjustment when a property first starts to be used to generate assessable income (e.g., when it is first rented out).

If the main residence exemption is not available, the taxpayer may include incidental ownership costs in the CGT cost base (e.g. undeducted loan interest, etc.) to reduce the taxable gain, but the 50% CGT discount is also reduced (or unavailable for assets purchased after 8 May 2012), if an individual is not a tax resident during the period they own the property.

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Deloitte's view

Owners of Australian residential property, who are foreign tax residents, will need to carefully consider these new rules. The rules are essentially retrospective, as they can operate to deny the tax exemption on the increase in value of properties acquired since 20 September 1985, and not only on gains related to the period the owner is a foreign resident.

They also place an administrative burden on taxpayers, who may not have retained evidence of costs that could be included in the CGT cost base, which potentially could include costs of additions/renovations/repairs, interest on loans to purchase the home or fund renovations, costs of ownership, etc.

The sale of an Australian home might already be taxable in the foreign country where the owner is residing. However, in some countries, the foreign tax is likely to be less than the new Australian tax, due to lower tax rates or partial exemptions and, in other countries, there would be no foreign tax on the sale, so the Australian tax will be a significant additional tax impost.

The CGT liabilities at stake in these circumstances could be material given the significant increase in house prices in Australia over recent years, particularly in Sydney and Melbourne.

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