



## Tax Bytes

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Greetings from your Tax & Legal team at Deloitte Singapore.

We are pleased to update you on the following new/updated content from the Inland Revenue Authority of Singapore (IRAS):

- **Tax residency of a company;**
- **Applying for a Certificate of Residence (COR)/Tax Reclaim Form**

On 29 November 2023, the IRAS has updated its website on:

- [tax residency of a company](#): how to determine the location of where strategic decisions are made for hybrid/virtual Board of Director meetings; and
- [applying for a COR/Tax Reclaim Form](#): considerations for application of COR in respect of calendar year 2025 and after for foreign-owned investment holding companies.

### Tax residency of a company

Singapore's tax laws prescribe that the tax residency of a company is determined by where the control and management of its business is exercised. "Control and management" broadly refers to the process of making strategic decisions regarding a company's policies and overall strategy. Determining where a company's control and management is exercised is a matter based on factual evidence.

The IRAS considers a company to be a tax resident of Singapore for a particular Year of Assessment (YA) if the control and management of its

business was exercised in Singapore in the preceding calendar year. Conversely, a company is non-resident if such control and management was not exercised in Singapore. Tax residency status is not permanent and can vary from year to year.

IRAS has usually associated the place of control and management with the physical location of the company's Board of Directors meetings. However, this is not conclusive under certain scenarios.

IRAS has updated how the tax residency of a company is determined when it conducts hybrid/virtual Board of Director meeting(s).

A company which has its board meeting utilising virtual meeting technology will generally be considered as having strategic decisions made in Singapore if:

- At least 50% of the directors, who have the authority to make strategic decisions, are physically in Singapore during the meeting; or
- The Chairman of the Board of Directors (if there is such appointment) is physically in Singapore during the meeting.

IRAS has also highlighted scenarios where control and management is not considered to be exercised in Singapore:

- Where there are no Board of Director meetings held in Singapore, with directors' resolutions passed only by circulation instead;
- The local director in Singapore acts as a nominee whilst the rest of the directors, who make strategic decisions, are based outside of Singapore;
- Strategic decisions are not made by the local director in Singapore; or
- There are no key employees based in Singapore.

It is important to note that the place of incorporation of a company does not necessarily determine its tax residency. The key factor remains where the control and management, particularly strategic decision-making, occurs.

### **Foreign-owned investment holding companies applying for a Certificate of Residence/Tax Reclaim Form**

IRAS generally regards foreign-owned investment holding companies with purely passive or foreign-sourced income as non-tax residents and would not issue to them a COR. However, IRAS may still issue a COR to these companies if:

- the control and management of its business is exercised in Singapore; and
- there are valid reasons for its office set-up in Singapore.

Additionally, the company must also fulfil the following conditions for the issuance of a COR:

- have related companies in Singapore that are either Singapore tax residents or have business activities here;
- receive support or administrative services from a related company in Singapore;
- have at least 1 Singapore-based director who holds an executive position and is not a nominee director; or
- have at least 1 key employee (e.g., CEO, CFO, COO) based in Singapore.

For COR applications pertaining to the 2025 calendar year and subsequent years, IRAS has amended the criteria. Specifically, the applicant company must:

- have at least 1 Singapore-based director who holds an executive position and is not a nominee director (*existing criteria*); or
- have at least 1 key employee (e.g., CEO, CFO, COO) based in Singapore (*existing criteria*); or
- be managed by a Singapore-based related company (e.g., the Singapore-based related company is involved in making significant decisions regarding the operations of the applicant company or reviews the performance of the investments of such applicant company) (*amended criteria*).

### Closing remarks

The introduction of virtual meeting considerations in Singapore's tax residency rules reflects Singapore's adaptation to modern business practices. This shift is significant as it acknowledges the evolving nature of decision making in the digital era.

Where a virtual board meeting is conducted, it would be good practice to note the physical locations of the directors in the meeting minutes as a company should be regarded as a Singapore resident if more than 50% of the directors who have the authority to make strategic decisions are physically present in Singapore when attending the board meeting.

Alternatively, a company should also be regarded as a Singapore resident if the chairperson of the board of directors is physically in Singapore when attending the virtual meeting. Whilst the Companies' Act (Cap. 50) and Income Tax Act (Cap.134) do not specifically prescribe the role of a chairperson of the board of directors, his/her presence during the company's virtual meetings carries weight in the eyes of IRAS. This underscores the importance of the chairperson's role in the decision-making process and acknowledges his/her influence in strategic corporate matters. It implies that the physical location of the chairman, as a key decision-maker is a crucial factor in determining whether the company's business is considered to be controlled and managed out of Singapore.

The forthcoming changes in the criteria for obtaining a COR from 2025 onwards also highlights the necessity for foreign-owned investment holding companies who derive purely passive foreign-sourced income to have key employees or executive directors who are based in Singapore, or in the alternative, to have related companies in Singapore that have the necessary resources or capabilities to manage the affairs of such investment holding company.

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### Contacts

Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).



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