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# OECD Secretariat weighs the effect of COVID-19 crisis on tax treaties

Legal Flash Tax

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- > At the request of several countries, OECD Secretariat releases document analyzing how this crisis affects double tax treaties, dealing with issues related to permanent establishments, tax residence and cross border workers.
- > The guidance included with the document does not depart from the Commentaries on the OECD Model Convention and, in general terms, embraces the exceptionality of the situation to play down the impact of the crisis.
- > The document also refers to measures and interpretations followed by some countries.



On April, 3, 2020, the OECD Secretariat issued guidance on the impact of the COVID-19 crisis on tax treaties (*OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis*, accessible [here](#)). The document is part of a series in which the OECD aims to tackle the effects of this crisis; therefore, it should be considered soft law, taking into account that it has been prepared by the Secretariat and not by the OECD itself.

The analysis addresses the tax consequences of restricting the mobility of people in the field of tax treaties following the OECD Model Convention, analyzing four aspects:

- Permanent establishments (PE): It is unlikely that this crisis will have a material impact on determining the existence of a PE. People working from home are not creating a fixed place of business or acting as dependent agents, considering the exceptionality of the situation. However, the interruption of activities on construction sites would not affect the determination of a construction PE (i.e., it does not cease to exist because work is temporarily discontinued).
- Tax residence of companies: It is unlikely that the crisis will affect the tax residence of companies, although the document does not rule out the possibility of dual-residence situations arising. If the applicable tie-breaker rule refers to the mutual procedure agreement, the authorities should consider the relevant facts and circumstances (including those relating to the COVID-19 crisis). If the tie-breaker rule hinges on the place of effective management, the document highlights that its usual and ordinary location should be found. The document makes a reference to the board of directors as a relevant aspect to consider according to the interpretation of some countries, although the Commentaries have not included this reference in this field since 2008.
- Cross border workers: The country where services are usually carried out is entitled to tax salaries paid during this period, even if the worker is physically in a different jurisdiction, as in the case of termination payments. The document calls for flexibility in the application of the tax treaties' special rules applicable to cross border workers.
- Tax residence of individuals: It is unlikely that the crisis will affect the determination of tax residence of individuals, and the application of the tie-breaker rules established in the tax treaties should resolve any conflict of residence, playing down the impact of the restrictions.



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