



## **Income tax law provisions related to tax residency and PE unaffected by Covid-19**

**3 November 2020 - The Cyprus Commissioner of Taxation issued last week Implementing Directive No. 04/2020, which clarifies the application of the Cyprus Income Tax Law provisions and more specifically the provisions of Article 2 related to tax residency and Permanent Establishment (PE) during the Covid-19 crisis.**

The Directive, stipulates that the determination of the tax residency of individuals, the place of effective management in relation to corporate residency and the existence of PEs will not be affected by the temporary nature of the extraordinary circumstances related to Covid-19 and, thus, whereabouts and actions affected by the pandemic should be ignored by tax authorities and must not trigger a corporate tax residency scrutiny or change.

The Implementing Directive also addresses the 50% exemption provided under Article 8(23) of the Cyprus Income Tax Law and the 90 days' exemption under Article 36(5).

The Implementing Directive (Εφαρμοστική Οδηγία) was issued on 27 October 2020 and can be downloaded [here](#) in GR.


### **Applying the Directive**

The Commissioner of Taxation has indicated that although such guidance is not binding, the intention is to follow it as deemed appropriate. The Commissioner further notes that the provisions of the Implementing Directive will be applied on the condition that the taxpayer elects to do so, otherwise the provisions of the relevant tax law will apply. Moreover, the Directive does not take into consideration the possible different tax treatment of the matters raised by other tax jurisdictions and focuses exclusively on Cypriot tax-related considerations.

The Implementing Directive sets a default period of time, namely the period between 21 March 2020 to 9 June 2020, during which the Commissioner of Taxation considers that 'force majeure' circumstances are applied. The default period may be extended (i.e. to before 21 March, and/or to after 9 June 2020) by application of, and evidence provided by, the taxpayer.

### **Individuals' tax residency considerations (183 days' rule and 60 days' rule)**

Where an individual is already in Cyprus and his presence as well as his stay are due exclusively to Covid-19 pandemic reasons and of the relevant travel restrictions, the period from 21 March 2020 to 9 June 2020 will not be taken into consideration for the purpose of determining the tax residency of such an individual and taxing his income.



In order to prevent abuse of the provisions therein, an individual staying in Cyprus for a period exceeding 183 days and wishing to call upon the provisions of this Implementing Directive, should furnish relevant evidence to support his claim (e.g. a tax residency certificate issued by a foreign tax authority). In addition, in the case where an individual remains abroad for reasons relating to the Covid-19 pandemic and other travel restrictions, and who under other circumstances would have been in Cyprus, then for the purpose of determining his tax residency and tax obligations, such an individual will be deemed to have been present in Cyprus. That is, the days that the individual has spent abroad during the period from 21 March 2020 to 9 June 2020 will be ignored/ not taken into consideration (such period can be extended depending on the case at hand).

The Implementing Directive indicates that the above principles apply in the case of individuals who are tax resident on the basis of the 60 days' rules and on the provision that they are not tax resident in any other state. The overseas presence of individuals during the period 21 March 2020 to 9 June 2020 will be ignored, and for the purpose of imposing taxation such individuals will be deemed to have been physically present in Cyprus on the presumption that the rest of the conditions set in the Legislation are met, i.e. maintain of permanent residence in Cyprus, exercise of a business or employed or holds an office in Cyprus, not to spend more than 183 days in any other country.

### **Application of Sections 8(23) and 36(5) of the Income Tax Law**


For the purpose of applying the provisions of Section 8(23) of the Income Tax Law i.e. the 50% exemption, the Implementing Directive that the relevant deduction will be provided in the case the individual suffers a reduction in his employment income (i.e. emoluments being less than €100.000 per annum taking into account any special allowances) as a result of the special Covid-19 pandemic measures taken by the Government and/or the employers.

The individual will be deemed to have had income from employment in excess of €100.000 per annum for the purpose of applying this Article, on the condition that there is supporting evidence (e.g. certificate of emoluments, monthly pay slips, decision of the employer for a holistic or selective reduction in salaries).

For the purpose of applying the provisions of Section 36(5) of the Income Tax Law, i.e. the 90 days rules exemption, the Implementing Directive clarifies that, if an individual was unable to travel overseas for the performance of his duties (based on his employment contract or based on the ordinary practice of the business) during the crisis period due to the prevailing circumstances, and after taking into consideration the real circumstances as well as the practice in prior years, the individual's tax position should not be affected in any way. All relevant evidence should be maintained for this purpose.

### **Corporate tax residency considerations**

A company which is not tax resident in Cyprus, will not be deemed as establishing tax residency in Cyprus by reason of the presence/stay in its territory of staff, directors, representatives or employees under a contract of service, when the reasons of their stay in



the Republic are Covid-19 pandemic related. Furthermore, the Implementing Directive clarifies that the tax residency status of a Company in Cyprus will not be affected by reason of a director not being able to travel to Cyprus and attend a meeting of the Board of Directors, when the reasons are exclusively related to the Covid-19 pandemic. The Implementing Directive notes that the actual circumstances of each case should also be considered prior to reaching a final decision. All necessary evidence should be kept supporting the case at hand.

As always, the Taxation Department of Costas Tsielepis & Co Ltd is at your disposal should you require any further information or clarifications on this or any other tax issue.