

# COVID-19: HMRC Announces its Approach to Company Residence

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There has been considerable discussion about the effect that the travel restrictions resulting from the COVID-19 pandemic might have on the tax residence of companies, particularly where directors are stuck in a different jurisdiction and cannot attend board meetings as they would in normal circumstances.

On 7 April, HMRC updated its published guidance to discuss this concern (<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm120185>). As discussed in our recent Tax Talks ([COVID-19: UK Tax Residence for Companies and Individuals](#)), a company will be tax resident in the UK if it is either incorporated in the UK or centrally managed and controlled in the UK. In that blog we discussed this risk that, if directors of non-UK resident companies who are presently located in the UK and are unable to leave the country because of COVID-19 and associated travel restrictions are making decisions from the UK, the company could become UK tax resident under the “central management and control” test.

HMRC’s statement does not lay down any specific change of approach to the issue of company residence with HMRC considering that the existing guidance and legislation provides sufficient flexibility to deal with companies adjusting their business activities in response to the virus. For companies affected, HMRC’s statement that it is “very sympathetic to the disruption that is being endured” will provide some comfort and suggests that HMRC will take a pragmatic approach to corporate residence in the current circumstances.

As we described in the Tax Talks mentioned above, we consider that what is important for the company residence test is the pattern of decision taking over the life of the company and the relative importance of the decisions taken, so management should think carefully about what the board is discussing in any particular meeting and potentially manage the board meeting procedure accordingly. Short term decisions taken in the UK are, therefore, unlikely to lead to a company becoming UK tax resident under the “central management and control” test. This is supported by HMRC’s statement that it does not consider that a company will necessarily become UK resident where a few board meetings are held in the UK or there is participation in overseas board meetings from the UK “or because some decisions are taken in the UK over a short period of time”.

HMRC has adopted a similar approach in respect of permanent establishments.

In addition, the OECD has published an Analysis of Tax Treaties and the Impact of the COVID-19 Crisis ([https://read.oecd-ilibrary.org/view/?ref=127\\_127237-vsdagpp2t3&title=OECD-Secretariat-analysis-of-tax-treaties-and-the-impact-of-the-COVID-19-Crisis](https://read.oecd-ilibrary.org/view/?ref=127_127237-vsdagpp2t3&title=OECD-Secretariat-analysis-of-tax-treaties-and-the-impact-of-the-COVID-19-Crisis)) considering the implications of the disruption to tax residence and associated tie breakers, permanent establishments and employee tax concerns among other things. While emphasising that there may well be specific local law issues to consider (such as state taxes), the OECD’s general approach is that the temporary and extraordinary changes to business operations caused by the crisis are unlikely to adversely affect multinational tax analyses because they will lack the necessary aspects of permanence, habituality, employer control and other factors that are relevant to the tax concepts at the heart of tax residence and tax treaty terms.

So, while the current circumstances do raise issues that are worthy of proper consideration, the guidance from HMRC and the OECD does, in our view, give considerable comfort that businesses should not be penalised as a result of carrying on their operations and top level management activities in the most practicable manner possible. Of course, if the current disruption continues for a significant time this will warrant further consideration.

Please contact any member of our UK Tax group if you have any queries about how any of the above or how the current COVID-19 related disruption might affect your business.

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