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VOLUME 12 ISSUE 1 | The Lawyers Newsletter for Business Professionals | APRIL 2021

COVID-19 AND THE TAX RESIDENCY IMPLICATIONS OF RUNNING A BUSINESS

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The COVID-19 pandemic has forced the implementation of unprecedented governmental measures which are aimed at preserving the health and safety of the public. One of the more significant and prolonged measures has been a restriction on international travel. This restriction has left employees stranded in countries other than their normal country of work, while triggering increased reliance on virtual meetings and remote work, as operations shift to innovative methods of conducting business. These shifts may indirectly have unforeseen implications on both individuals and companies from a tax residency perspective. This Article aims at addressing three (3) of these tax residency implications, namely:

1. The creation of tax liabilities, obligations and compliance requirements on companies in new countries;
2. Similar implications for individuals; and
3. The creation of permanent establishments.

For companies involved in cross-border transactions, travel restrictions may have indirect implications as directors and other senior managers may be constrained to meet and execute decisions from countries in which they do not ordinarily do so. This change has the potential to shift the tax residence of the companies.

From a domestic tax law perspective, the tax legislation of many countries, including T&T, subject resident companies to corporation tax on its world-wide profits; this refers to income that is generated from sources accrued in or derived from any country of the world. A company is considered to be resident in T&T where it is controlled (that is, that the "mind and management" of the company is ordinarily situated in T&T) whether or not it is legally incorporated in, or engaged in trade or business in T&T.

One of the crucial factors that determines where the "mind and management" of a company is ordinarily situated, is the place where the majority of its board of directors meetings and management decisions are executed. If these are conducted in a jurisdiction in which the company was not previously or ordinarily resident, this could blur the lines as it relates to the company's tax residency status.

This may result in the creation of tax liabilities, filing obligations and other compliance requirements in the new country but as the company still conducts business in T&T, it continues to have corporation tax liabilities to T&T on the income generated here. Moreover, in computing its corporation tax, the company may not be afforded certain relief that is afforded only to residents, such as group loss relief. Furthermore, expenses incurred by a subsidiary for services performed by the company may be recharacterised as management charges by the Board of Inland Revenue ('BIR'), restricting the amount that can be deducted as an expense, while dividends remitted and paid by the subsidiary may be subject to withholding tax.

For companies engaged in cross-border transactions, the tax residence of the company is critical to determining whether the company may be afforded relief pursuant to a double taxation treaty.

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