



Tax Department clarifies tax status of permanent establishments and legal persons during COVID-19 pandemic



04 December 2020 | Contributed by Elias Neocleous & Co LLC

Corporate Tax, Cyprus

- 🕒 Introduction
- 🕒 Issues regarding permanent establishments
- 🕒 Tax residence of legal persons

Introduction

The COVID-19 pandemic has led to the imposition of various measures on a global scale which have inevitably put restrictions on the physical presence of persons at their workplaces. This has raised concerns in relation to the permanent establishment of businesses and the tax residence status of legal persons.

The Organisation for Economic Cooperation and Development (OECD) recently issued general guidelines for the interpretation of possible tax issues caused by the COVID-19 pandemic.

Issues regarding permanent establishments

The circumstances created by COVID-19, whereby people are working remotely and reside in a country other than where their job is based, have raised concerns as to the creation of permanent establishments and the relevant tax obligations arising therefrom. The OECD guidelines, nonetheless, indicate that such conditions will not create changes in the definition of a 'permanent establishment'.

In particular, any activities carried out in Cyprus by persons remaining in Cyprus solely due to the exceptional circumstances created by the pandemic, will not be regarded as activities which create a permanent establishment.

The OECD has clarified that such presence of persons in Cyprus will not create permanent establishments for their employers provided that such presence is temporary in nature and is due to work-related constraints arising out of government directives introduced to combat the COVID-19 pandemic. By the same token, where agents or employees enter into contracts on behalf of their company in a country other than their usual work base due to COVID-19 travel restrictions, this will not constitute evidence of a permanent establishment for the relevant company in that country.

Any period for which a person has been abroad, due to COVID-19 travel restrictions, but would otherwise have been in Cyprus will not be taken into account for the purposes of establishing a permanent establishment in Cyprus. In such cases, it will be considered that these persons were conducting their activities from Cyprus.

Tax residence of legal persons

Companies which are a non-tax resident in Cyprus will not be deemed to acquire tax residence there due to staff, directors, representatives or employees under a service contract of that company being in Cyprus where the reason for such a stay relates solely to the COVID-19 pandemic.

Similarly, the failure of a director to travel to Cyprus to attend a board of directors' meeting, when such a failure is due to the pandemic, will not affect the company's tax residence in Cyprus.

For further information on this topic please contact Elena Christodoulou or Andrea Constantinou at Elias Neocleous & Co LLC by telephone (+357 25 110 110) or email (elena.christodoulou@neo.law or andrea.constantinou@neo.law). The Elias Neocleous & Co LLC website can be accessed at www.neo.law.

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription.



Elena Christodoulou Andrea Constantinou