

FREQUENTLY ASKED QUESTIONS (FAQ) ON INTERNATIONAL TAX ISSUES DUE TO COVID-19 TRAVEL RESTRICTIONS

FAQs

1. The following FAQs are in response to travel restrictions imposed due to the global COVID-19 pandemic. The responses are measures undertaken solely because of COVID-19 related situations. If required, additional information and revised rulings will be issued subject to the evolving situation on COVID-19.
2. Relevant documentations and information must be kept and submitted to LHDNM upon request. Examples: travel documents, local or foreign authority travel restrictions guidelines and similar relevant documents that may prove your temporary absence or presence in Malaysia is due to COVID-19 travel restrictions, documents that prove your effort to leave or return to Malaysia (responses from the Immigration Department of Malaysia/airlines company) during the movement control order period.
3. Companies must keep relevant documentations, records and information and to submit them to LHDNM upon request. Examples: Minutes of Board of Directors (BoD) meeting stating the reasons for the directors attending the BoD meeting from their respective locations, travel documents, local or foreign authority travel restrictions guidelines and similar relevant documents.
4. The movement control order period is from 18 March 2020 as prescribed and extended by the Ministerial order made under section 11 of the Prevention and Control of Infectious Diseases Act 1988 [Act 342] as gazetted from time to time.
5. Applications for tax treatment based on this FAQ must be referred to the branch that handles the taxpayer's income tax file. If an income tax file has not been registered, applications should be made to the Non Resident Branch. Every application for the tax treatment will be reviewed according to the merit of the case. Confirmation of taxability from foreign tax authorities involved may be requested if the need arises.
6. In view of the reopening of international borders and travel restrictions being lifted, the tax treatment concessions in response to travel restrictions imposed due to the COVID-19 pandemic will not be extended after 31 December 2021.

A. RESIDENCE STATUS

No.	Question	Feedback
1.	I am currently outside of Malaysia because of COVID-19 travel restrictions. Does my absence from Malaysia affect my residence status in Malaysia?	It will not affect your residence status in Malaysia. If you are an individual who is temporarily absent from Malaysia because of COVID-19 travel restrictions, the period of temporary absence shall be taken to form part of your period or periods in Malaysia for the purpose of determining tax residence.
2.	I am not a resident in Malaysia. Currently, I am in Malaysia	If you are an individual who is temporarily present in Malaysia because of COVID-19 travel

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	because of COVID-19 travel restrictions. Would my temporary presence in Malaysia affect my residence status in Malaysia?	restrictions, the period of temporary presence in Malaysia because of COVID-19 travel restrictions shall not be taken to form part of your period or periods in Malaysia for the purpose of residence status. Note: "Temporary presence in Malaysia because of COVID-19 travel restrictions" refers to the movement control order period in Malaysia.
3.	My company is unable to convene a meeting of the BOD in Malaysia because of COVID-19 travel restrictions. Will this have an effect on the company's residence status in Malaysia?	If your company is not able to convene its BOD meeting in Malaysia due to COVID-19 travel restrictions, LHDNM is prepared to presume the company as a Malaysian resident, provided it meets all the following conditions: a. the company is a resident in the immediate previous year of assessment; and b. the directors of the company have to attend the BOD meeting held outside Malaysia (either physical meeting or via electronic means) due to COVID-19 travel restrictions.
4.	My company convenes a meeting of the BOD in Malaysia because of COVID-19 travel restrictions. The company is not a resident in Malaysia and does not intend to seek residence status in Malaysia.	LHDNM is prepared to presume that the company is not a Malaysian resident if the company is required to hold BOD meeting in Malaysia due to COVID-19 travel restrictions.

B. PERMANENT ESTABLISHMENT

No.	Question	Feedback
5.	My company is not resident in Malaysia. Does the temporary presence of my employees or personnel in Malaysia due to COVID-19 travel restrictions lead to the creation of a permanent establishment in Malaysia?	LHDNM will consider such temporary presence of employees or personnel does not result in the creation of a permanent establishment in Malaysia, provided it meets the following criteria: a. your company does not have a permanent establishment in Malaysia before the existence of COVID-19 travel restrictions; b. there are no other changes to the economic circumstances of the company; c. the temporary presence of your employees or personnel in Malaysia are solely due to travel restrictions relating to COVID-19; and d. the activities performed by the employees or personnel during their temporary presence would not have been performed in Malaysia if not for the COVID-19 travel restrictions.

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		Note: 1. Economic circumstances refers to the principal activities and business model of the company; the nature of the business operations and the conduct of the business in Malaysia and elsewhere; and the usual locations in which the company operates. 2. Company must keep records and relevant documents. Examples: employees or personnel passport information, travel schedule, work order/ instructions and any information proving compliance with criteria (a) to (d), and providing relevant information to LHDNM upon request. 3. "the temporary presence of the employees or personnel in Malaysia is solely due to the travel restrictions relating to COVID-19" refers to the movement control order period in Malaysia. 4. This situation applies to all enterprises, including partnership and limited liability partnership. 5. The situation in this FAQ also applies to companies who are resident in countries which do not have a DTA with Malaysia. In such situations, the company is deemed to have no place of business in Malaysia.

C. CROSS BORDER EMPLOYMENT INCOME

No.	Question	Feedback
6.	Before the movement control order (MCO) period, I commute daily to Singapore from my home in Johor Bahru for work. Due to the MCO, I am temporarily working from home in Johor Bahru. Is my income taxable in Malaysia?	If the following conditions are met: a. there is no change in the contractual terms governing your employment overseas before and after your return to Malaysia; and b. this is a temporary work arrangement due to COVID-19 travel restrictions. LHDNM is prepared to consider your employment income (from your employment exercised in Malaysia) as not derived from Malaysia because the exercising of the employment in Malaysia is due to COVID-19 travel restrictions. If all the conditions are met, your employment income for the period of your temporary work in Malaysia will not be taxable in Malaysia. Normal tax rules will apply to determine the taxability of your employment income for work

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		done in Malaysia, if any of the conditions are not met. This scenario applies to all cross border employment situations.
7.	I am currently temporarily working from overseas due to COVID-19 travel restrictions. Is my income taxable in the current location?	If you would normally exercise your employment in Malaysia and is forced to work temporarily outside of Malaysia because of COVID-19 travel restrictions, you are regarded to be exercising your employment in Malaysia and the income is deemed derived from Malaysia. Therefore, the income is still taxable in Malaysia. You may be subject to taxation in the locality where you are temporarily present if no special tax measures for COVID-19 are provided by that locality's tax authority. If you are in a state that has a tax treaty with Malaysia, you will not be taxable if you are present for less than 183 days. If you are in a state that has no tax treaty with Malaysia, you might be subject to taxation. In such case, you may apply for credit relief under the ITA 1967.
8.	I am a non-resident individual. I arrived in Malaysia for a company assignment before the travel restriction because of COVID-19 was implemented. I am currently working from Malaysia due to COVID-19 travel restrictions. Am I considered to be exercising an employment in Malaysia?	If the following conditions are met: - temporary presence due to COVID-19 travel restrictions; - work you performed during your temporary presence is not related to your assignment in Malaysia and would not have been performed in Malaysia if not for the COVID-19 travel restrictions; - employment with the same overseas employer, prior to the COVID-19 travel restrictions; and - left Malaysia immediately after the travel restrictions on COVID-19 ends in Malaysia. LHNDM is prepared to consider you as not exercising an employment in Malaysia for the period of your temporary presence due to COVID-19 travel restrictions. Note: "temporary presence due to COVID-19 travel restriction" refers to the movement control order period in Malaysia.
9.	I am a non-resident individual. I arrived in Malaysia on vacation	If the following conditions are met:

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	before travel restrictions because of COVID-19 was implemented. I am currently working from Malaysia due to COVID-19 travel restrictions. Am I considered to be exercising an employment in Malaysia?	a. temporary presence due to COVID-19 travel restrictions; b. work you performed during your temporary presence would have been performed outside Malaysia if not for the COVID-19 travel restrictions; c. the same employment with the same overseas employer prior to the COVID-19 travel restrictions; and d. left Malaysia immediately after the travel restrictions on COVID-19 ends in Malaysia. LHDNM is prepared to consider you as not exercising an employment in Malaysia for the period of your temporary presence due to COVID-19 travel restrictions. Note: 1. You should keep records and relevant documents. Examples: passport information, travel schedule, work order/instructions from your employer and any information proving compliance with criteria (a) to (d), and providing relevant information to LHDNM upon request. 2. "temporary presence due to COVID-19 travel restriction" refers to the movement control order period in Malaysia.
10.	I am a non-resident individual and have been offered to work in Malaysia during the movement control period. I am unable to enter Malaysia to start work due to COVID-19 travel restriction. Therefore, I am currently working from overseas. Am I considered to be exercising an employment in Malaysia?	LHDNM considers the employment is not exercised in Malaysia as there is no "temporary absence period due to COVID-19 travel restrictions" issue. Therefore, the employment income can be taxed under domestic tax law in the country where the employment is exercised.
11.	I am a non-resident individual. I arrived in Malaysia for a vacation before travel restriction was imposed because of COVID-19. I had to work from Malaysia due to COVID-19 travel restrictions. Before the movement control period ended, I ceased employment with my foreign employers and accepted an offer to work with a company in Malaysia. What is the tax	Since you did not return to your home country, you are considered to be present in Malaysia permanently. As such, LHDNM considers the employment to be exercised in Malaysia as there is no "Temporary presence period due to COVID-19 travel restrictions" issue. Employment income with the foreign employer is considered to be exercised in Malaysia and will be taxed in accordance with Malaysian tax law under the Income Tax Act 1967.

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	treatment of my employment income from my foreign employers?	