

COVID-19 Travel Restrictions and Tax Residency Relief

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On May 19, 2020, the Canada Revenue Agency (the “CRA”) released guidance respecting potential unexpected tax residency consequences resulting from the travel restrictions around COVID-19. This is welcome relief and has been an area of concern addressed by many countries as early as March 2020. While the guidance is welcome and is intended to grant some relief, it is sufficiently vague and broadly worded to give rise to uncertainty.

Individual Residence

A taxpayer who is ordinarily resident or deemed resident in Canada is liable for Canadian tax on worldwide income. An individual who stays or “sojourns” in Canada for 183 days or more is normally deemed to be a Canadian resident.

In light of the pandemic, the CRA will not count the days towards the 183-day limit during which an individual is present in Canada and is unable to return to their country of residence *solely* as a result of the travel restrictions.

Much uncertainty remains. The CRA retains significant discretion and has not identified the specific days that will not count. For example, if a taxpayer chooses not to travel outside Canada before or after the official travel restrictions are in place because they are a member of a vulnerable population, or their destination is less safe than Canada, it is unclear what number of days will be excluded. Ideally, the CRA will also apply the same principles when determining where a taxpayer is “ordinarily resident,” but this is unclear at this time.

Corporate Residence

The CRA is relaxing the corporate residency tie-breaker rule under treaties that look to a non-resident corporation's place of management. A corporation governed by such a treaty will not be Canadian resident if the *only* basis for finding residency is that the travel restrictions forced a director to attend a board meeting from Canada. However, the CRA reminds taxpayers that a corporation's place of management is not considered exclusively by the location of director meetings. Further, residency for corporations from non-treaty jurisdictions will be determined on a case-by-case basis.

Permanent Establishment

The CRA will consider that certain circumstances resulting *solely* from the travel restrictions will not create permanent establishments (“PE”) in Canada for non-resident entities. However, as with residency, the CRA retains much discretion in identifying when to allow PE relief.

To see the guidance in full, including other administrative relief measures, [click here](#).

For more information, please contact a member of our Tax Group.

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