

Philippines: Relaxed application of tax treaty provisions for stranded individuals in the Philippines due to COVID-19

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In brief

The Bureau of Internal Revenue (BIR) issued *Revenue Memorandum Circular (RMC) No. 83-2020* to address the issues and concerns of taxpayers who were stranded in the Philippines due to COVID-19.

This RMC relaxes the application of the relevant Double Tax Agreement (DTA) provisions on employment income and permanent establishment for stranded cross-border workers in the Philippines.

In detail

Employment income

As a result of borders closing and travel restrictions, a significant number of cross-border employees and business travelers have ended up stranded and working remotely in the Philippines. Under Philippine domestic tax rules, the taxation of the income is determined by the place where the services are rendered. Thus, under normal circumstances, these individuals' presence in the Philippines would have triggered personal tax implications in the Philippines.

However, the BIR highlighted that individuals who are precluded from leaving the Philippines due to COVID-19 will not be regarded as being present in the Philippines for tax treaty purposes after their supposed scheduled date of departure. The BIR will consider this as 'force majeure' for purposes of determining the length of stay in the Philippines, provided that the individual leaves the Philippines as soon as the circumstances allow it (i.e. as soon as the travel restrictions and/or quarantine measures are lifted).

As an illustration, a non-resident individual, who was sent by his Singaporean employer to work for a Philippine company for a period of 90 days, was stranded in the Philippines for at least 94 more days, would still be eligible for treaty exemption despite accumulating actual Philippine days of more than 183 days. Given the exceptional nature of this case, the application of the relevant provisions of the DTA between Singapore and the Philippines will not be strictly applied (i.e. it would disregard the 94 days of unintended stay). As a result, the individual would remain a resident of Singapore despite his temporary dislocation.

As a caveat, the RMC reiterated that the Philippines still may tax the employment income if it appears that the individual is employed by a domestic company or if the remuneration is borne by a permanent establishment of the Singapore employer in the Philippines.

The same applies for a UK resident who merely spent holidays in the Philippines before COVID-19, became stranded, and thus worked remotely in the country. In this case, the BIR likewise would disregard such period of unintended stay for purposes of counting the Philippine days, provided that the individual has no other connections to the Philippines and that they should leave the country as soon as circumstances permit.

Inadvertent creation of permanent establishment (PE)

The BIR has clarified that the effects of COVID-19 would not result in the creation of a PE if the following requirements are met:

- The non-resident foreign company did not have a PE in the Philippines before the effects of COVID-19;
- There are no other changes in the company's circumstances save for the extended stay of its employee, partner, or agent in the Philippines because of travel restrictions; and
- The employee, partner, or agent should leave the country as soon as the circumstances would permit.

Documentary requirements

In order to prove that the extended presence in the Philippines was due to COVID-19, the following documents must be submitted to the BIR:

- Authenticated sworn certification stating the relevant facts and circumstances of the bona fide presence of the employee in the Philippines;
- Duly executed contract(s) – must be consularized or apostilled if executed/signed in a foreign country;
- Certified true copies of the confirmed booking or flight itinerary for the original and re-booked flights, travel advisory on the cancellation of flight issued by the airline company, and the employee's passport, including blank pages thereof; and
- Other documents that the BIR shall deem necessary depending on the circumstances.

The takeaway

As travel restrictions continue, the issuance of *RMC 83-2020* is welcome for employers that now may invoke treaty exemptions for their stranded employees in the Philippines.

However, critical to claiming the exemption is to show proof that the unintended days of the employee is due to COVID-19 restrictions and that the employee would leave the country as soon as the restrictions are lifted.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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