

# Spain: Tax residency analysis for dislocated individuals due to COVID-19 not in line with OECD guidance

2 December 2020

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## In brief

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While the OECD Secretariat issued guidance on interpreting the tax implications of the COVID-19 crisis relating to dislocated cross-border workers, the Spanish Tax Authorities maintain their position of counting the days of physical presence in Spain, regardless of whether this presence has been caused by COVID-19.

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## In detail

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### Background

Because of COVID-19 and mobility restrictions established by different countries, individuals have been affected, performing their duties from another country than the country of their employment.

The OECD Secretariat published an analysis of Double Tax Treaties (DTAs) and the impact of the crisis determining that, despite the regulatory complexity, this situation was unlikely to affect individuals' tax residency status.

Based on this guidance, several countries published guidelines on the determination of individual's tax residency with regards to dislocated cross-border individuals.

### Spanish interpretation

The Spanish Tax Authorities' guidelines are not in line with the OECD guidance. The Spanish Tax Authorities maintain their position of counting the days of physical presence in Spain, regardless of whether this presence has been caused by COVID-19.

Therefore, the number of days spent in Spain, the functions carried out in Spanish territory and other circumstances remain decisive when determining the tax implications including individuals' tax residency in Spain.

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## The takeaway

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The criteria to determine Spanish individual tax residency status have not changed.

We recommend analysing the situation of each individual case-by-case before the end of the calendar year.

Implications from the temporary transfer of an individual in Spain include:

- Withholding tax;
- Personal compliance obligations;
- Permanent Establishment (PE) risks;
- Social security obligations;
- Immigration obligations; and
- Labour implications.

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## Let's talk

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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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