

# The Cyprus Tax Authority (“CTA”) issued Implementing Directive (Εφαρμοστική Οδηγία) No. 07/2021 extending the application of the provisions of Implementing Directive No. 04/2020 that clarified the Cyprus Income Tax Law provisions related to tax residency and permanent establishment (“PE”) during the COVID-19 crisis

Issue N-1-2021, 29 January 2021

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## In brief

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On 25 January 2021, the CTA issued Implementing Directive No. 07/2021 extending the application of the provisions of Implementing Directive No. 04/2020 that clarified the Cyprus Income Tax Law provisions (Article 2) related to tax residency and PE during the COVID-19 crisis.

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## In detail

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Given the continued existence of COVID-19, the OECD issued updated non-binding guidance on 21 January 2021, further drilling down on the tax issues it covered in its original non-binding guidance issued on 3 April 2020.

The CTA issued Implementing Directive No. 07/2021 on 25 January 2021. The said Implementing Directive clarifies that the provisions of the Implementing Directive No.04/2020, which was issued on 27 October 2020, will continue to apply in 2021 as long as restrictions related to COVID-19 are still in place globally. It does not refer explicitly to the updated OECD non-binding guidance issued on 21 January 2021.

#### **Short reminder of Implementing Directive No.04/2020**

The CTA, through Implementing Directive No.04/2020, followed the essence and norms of the original OECD non-binding guidance issued on 3 April 2020, and clarified/discussed the determination of the following:

1. the tax residency of individuals (both under the 183 days and the 60 days rules);
2. the place of effective management in relation to corporate residency;
3. the existence of PEs; but also discussed items 4 & 5 below which are specific to the Cyprus tax framework:
4. '50% exemption' provided under Article 8(23) of the Cyprus Income Tax Law;
5. '90 days exemption' provided under Article 36(5) of the Cyprus Income Tax Law.

#### **Implementing Directive No.04/2020 further:**

- clarified that its application is optional on the taxpayer, i.e. the taxpayer may elect to apply for it at his discretion (in all other cases the 'normal' Cyprus Income Tax Law rules will apply);
- set a default period of time, namely the period between 21 March 2020 to 9 June 2020, during which the CTA considers that 'force majeure' circumstances are applied; the said default period may be extended (i.e. to before 21 March, and/or to after 9 June 2020) by application of, and evidence provided by, the taxpayer;
- discussed only the Cyprus tax perspective, irrespective of the tax treatment by another State;
- stated that each case will be examined on its own merits.

Lastly, Implementing Directive No.04/2020 provided three illustrative examples that attempt to clarify the practical application of it.

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## The takeaway

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The said Implementing Directives are based on the principle that arrangements that may affect the determination of the tax residency status for individuals and companies, as well as the determination of the existence of PEs, during COVID-19 are temporary in nature and, thus, provide for a relaxation to the application of the Cyprus Income Tax Law rules with respect to the said tax items during the affected period.

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## Let's talk

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For a deeper discussion of how this issue might affect your business, please contact:

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