6 February 2024

Tax alert

Tax residency of a company: new guidance for virtual meetings and revised considerations for foreign-owned investment holding companies

In December 2023, the Inland Revenue Authority of Singapore (IRAS) has announced new guidelines and revised considerations on the determination of tax residency of a company. Notably, the new guidance focuses on hybrid or virtual Board of Directors (BOD) meetings while the revised considerations are relevant to a foreign-owned investment holding company in Singapore.

The new guidelines and revised considerations are results of a review conducted by the IRAS, given the changes in business environment and international practices.

This alert provides an overview of the new and revised guidelines for tax residency and our observations.

At a glance: current vs. new

1. Hybrid or virtual BOD meetings	
Current rules	**New rules**
There is currently no specific guidance by the IRAS on determining where strategic decisions are made for hybrid or virtual BOD meetings.	A hybrid or virtual BOD meeting will generally be regarded as having strategic decisions made in Singapore if one of the following conditions is met: ► At least 50% of the directors (with the authority to make strategic decisions) are physically in Singapore during the meetings. Or ► Chairman of the BOD is physically in Singapore during the meeting.
2. Foreign-owned investment holding company	
Current rules	**Revised rules***
For foreign-owned investment holding companies deriving only passive sources of income, they will be treated as Singapore tax residents if they can show that: ► The control and management of the company's business is exercised in Singapore (e.g., by showing IRAS that its BOD meetings are held in Singapore). ► The company has valid reasons for setting up an office in Singapore. ► The company must also:	
► Have at least one director based in Singapore who holds an executive position and is not a nominee director Or ► Have at least one key employee (e.g., CEO, CFO or COO) based in Singapore Or ► Have related companies in Singapore that are tax residents of Singapore or have business activities in Singapore Or ► Receive support or administrative services from a related company in Singapore.	► Have at least one director based in Singapore who holds an executive position and is not a nominee director Or ► Have at least one key employee (e.g., CEO, CFO or COO) based in Singapore Or ► Be managed by a related company based in Singapore. *For Certificate of Residence applications in respect of calendar year 2025 and after.

Background

Current tax considerations

Under Singapore tax law, a company or body of persons is a resident in Singapore for a particular year of assessment if the control and management (C&M) of the business is exercised in Singapore in the preceding calendar year.

To determine where the C&M of the business is exercised, the IRAS, in practice, will generally look at where the BOD of the company meets to make strategic decisions and important matters concerning the company.

In the case of a foreign-owned investment holding company (where 50% or more of its shares are held by foreign companies or individual shareholders who are not citizens of Singapore) deriving only passive sources of income, the IRAS has clarified that such companies must demonstrate that decisions on strategic matters are made at the BOD meetings held in Singapore and it may also look at other factors further discussed below.

For completeness, for non-Singapore incorporated companies and Singapore branches of foreign companies that are controlled and managed by their overseas parent, they are not considered tax residents of Singapore. However, such companies or branches may still be regarded as Singapore tax residents in exceptional situations.

Changing business environment

The current IRAS' approach to determine the tax residency of a company places a heavy emphasis on the physical BOD meetings being held in Singapore.

With the increasing prevalence of hybrid or virtual meetings and the recent amendments to The Companies Act 1967 to, amongst others, allow companies to hold fully virtual and hybrid company meetings using virtual meeting technology only[1], it is timely that the IRAS conducted a review on the determination of tax residency of a company and issued the following:

1. New guidance on determining where strategic decisions are made for hybrid or virtual BOD meetings

2. Revised considerations for determining whether a foreign-owned investment holding company has exercised its C&M in Singapore

[1] The Companies Act 1967 was amended with effect from 1 July 2023 to allow companies to hold fully virtual and hybrid company meetings and clarified that the Company Act does not prohibit board meetings from being held virtually, amongst others.

Tax updates

New guidelines for hybrid or virtual BOD meetings

The IRAS has announced that a BOD meeting that involves the use of virtual meeting technology (defined as any technology that allows a person to participate in a meeting without being physically present at the place of meeting) will be regarded as having strategic decisions made in Singapore (and hence a Singapore tax resident) if either of the following conditions is met:

- At least 50% of the directors (with the authority to make strategic decisions) are physically in Singapore during the meetings.

  Or

- Chairman of the BOD (if the company has such an appointment) is physically in Singapore during the meeting.

Revised considerations for foreign-owned investment holding company deriving only passive sources of income or receiving only foreign-sourced income

The IRAS may issue a Certificate of Residence (COR) if these companies can show that:

- The C&M of the company's business is exercised in Singapore.

- The company has valid reasons for setting up an office in Singapore.

This includes demonstrating that decisions on strategic matters are made in Singapore (e.g., by showing the IRAS that their BOD meetings are held in Singapore).

For COR applications in respect of calendar year 2025 and after, apart from demonstrating that decisions on strategic matters are made in Singapore, the company must also:

- Have at least one director based in Singapore who holds an executive position and is not a nominee director

  Or

- Have at least one key employee (e.g., CEO, CFO, or COO) based in Singapore

  Or

- Be managed by a related company based in Singapore (e.g., the related company makes the decisions relating to the operations of the foreign-owned investment holding company or reviews the performance of the investments of the company).

Our observations

Singapore's tax residency test for companies solely depends on where the C&M of a business is exercised, unlike other jurisdictions where the place of incorporation may be taken into account. Where the C&M of a company is exercised is in turn a question of fact and degree, and may not be that straightforward in practice.

Given the increased use of virtual technology in meetings where directors situated in different physical locations attend the BOD meeting remotely, this has increased the possibility that the C&M of a business may be found to be exercised in different jurisdictions, possibly at the same time too. Hence, the IRAS' specific guidance for hybrid or virtual BOD meetings provides clarity in identifying a single location where the C&M of a business can be attributed to.

Departing from the usual physical location of the BOD meetings to determine where strategic decisions are made, the new guidance for hybrid or virtual BOD meetings instead requires the physical presence of the company's directors (e.g., at least 50% of the directors with the authority to make strategic decisions or the Chairman of the BOD) in Singapore to demonstrate that strategic decisions are made in Singapore.

Further, under the revised considerations for foreign-owned investment holding company, such companies must continue to hold BOD meetings in Singapore, and show that the management of the companies is exercised in Singapore, either by its key management (e.g., a director who holds and executive position, CEO, CFO or COO) or a related company in Singapore. The previous considerations relying on certain attributes of such companies' related parties in Singapore for tax residency purposes (e.g., by requiring the related companies in Singapore to be tax residents of Singapore or have business activities in Singapore), or to receive support services from a related company in Singapore are no longer applicable for COR applications from calendar year 2025 and after.

In summary, the physical presence of key management team based in Singapore is now all the more critical in determining whether one has indeed exercised C&M in Singapore under the updated rules.

For companies where their key management team is based in Singapore and the BOD meetings are predominantly physically held in Singapore, the updated guidance and considerations may not have a significant impact.

Companies should maintain documentary evidence (e.g., board minutes) demonstrating strategic decisions being made in Singapore, and the physical presence of such key directors and employees in Singapore.

If you would like to know more about the issues discussed or EY services, please contact one of the following or your usual EY contact:

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