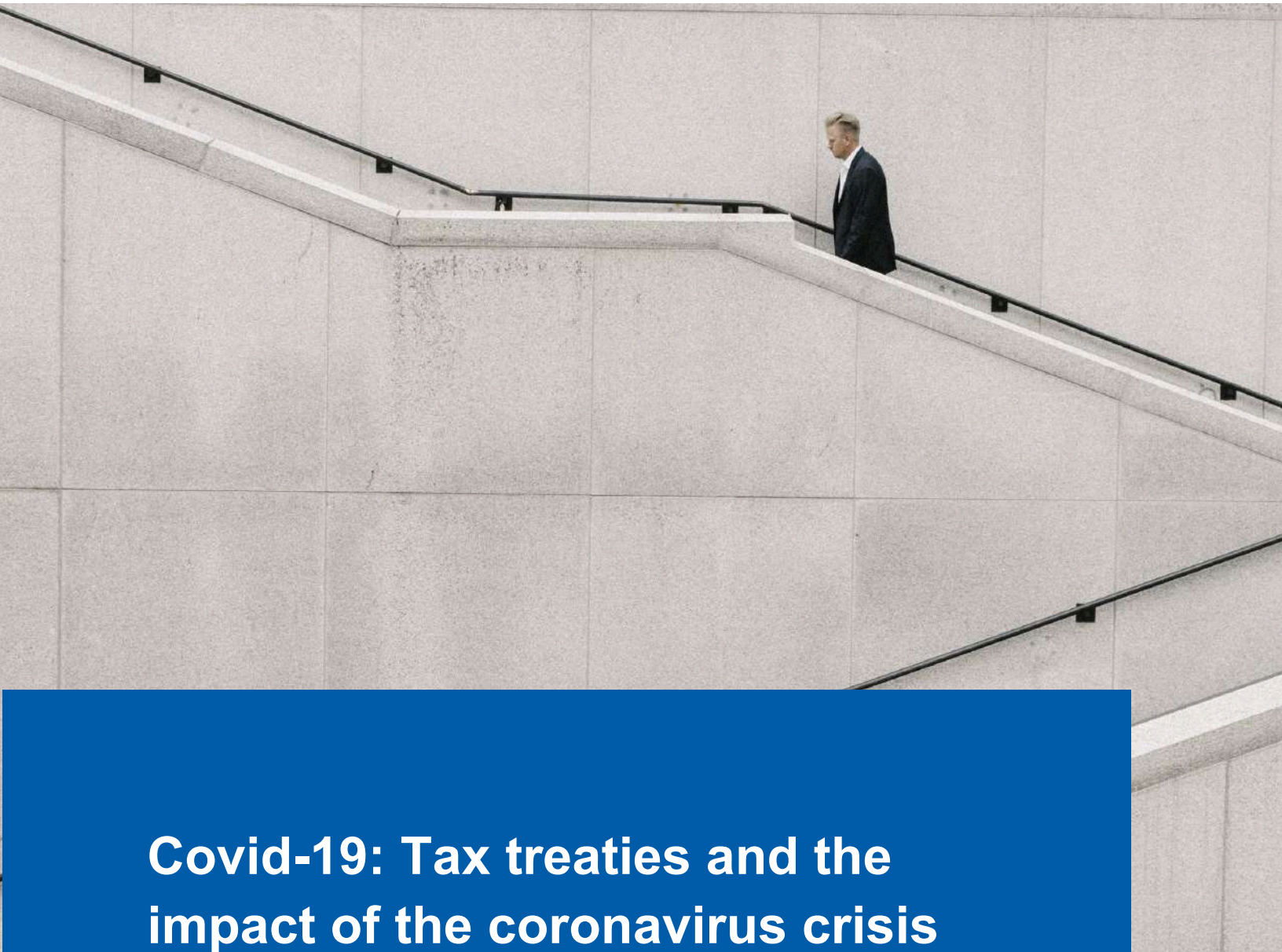


News Flash

April 21, 2020



**Covid-19: Tax treaties and the
impact of the coronavirus crisis**

Covid-19: Tax Treaties and the impact of the COVID-19 crisis

As a result of the COVID-19 pandemic, many cross-border workers are unable to physically perform their duties in their country of employment. They may have to stay at home and telework or may be laid off because of the exceptional economic circumstances.

This unprecedented situation is raising many tax issues on how to allocate the right to tax between countries, which is currently governed by international tax treaty rules that delineate taxing rights.

On 3 April 2020, the OECD Secretariat has issued the guidance on these issues. Below, we present only a brief overview of the issues covered.

Creation of permanent establishments

Home office

The exceptional and temporary change of the location where employees exercise their employment because of the COVID-19 crisis, such as working from home, should not create new PEs for the employer, either because such activity lacks a sufficient degree of permanency or continuity or because, except through that one employee, the enterprise has no access or control over the home office.

Agency PE

Similarly, the temporary conclusion of contracts in the home of employees or agents because of the COVID-19 crisis should not create PEs for the businesses.

Construction PE

A construction site PE would not be regarded as ceasing to exist when work is temporarily interrupted.

The residence status of a company (place of effective management)

In situations where the treaty contains the pre-2017 OECD Model tie-breaker rule, the place of effective management will be the only criterion used to determine the residence of a dual-resident entity for tax treaty purposes. The place

of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

A temporary change in location of the chief executive officers and other senior executives is an extraordinary and temporary situation due to the COVID-19 crisis and such change of location should not trigger a change in residency, especially once the tie breaker rule contained in tax treaties is applied.

Cross border workers

Where a government has stepped in to subsidise the keeping of an employee on a company's payroll during the COVID-19 crisis, the income that the employee receives from the employer should be attributable, based on the OECD Commentary on Article 15, to the place where the employment used to be exercised. In the case of employees that work in one state but commute there from another state where they are resident (cross border worker), this would be the state they used to work in.

The residence status of individuals

A person is temporarily away from their home (perhaps on holiday, perhaps to work for a few weeks) and gets stranded in the host country by reason of the COVID-19 crisis and attains domestic law residence there.

Even if the person becomes a resident under such rules, if a tax treaty is applicable, the person would not be a resident of that country for purposes of the tax treaty

A person is working in a country (the “current home country”) and has acquired residence status there, but they temporarily return to their “previous home country” because of the COVID-19 situation. They may either never have lost their status as resident of their previous home country under its domestic legislation, or they may regain residence status on their return

If the person is or becomes a resident under such rules, if a tax treaty is applicable, the person would not become a resident of that country under the tax treaty due to such temporary dislocation. Because the COVID-19 crisis is a period of major changes and an exceptional circumstance, in the short-term tax administrations and competent authorities will have to consider a more normal period of time when assessing a person’s resident status.

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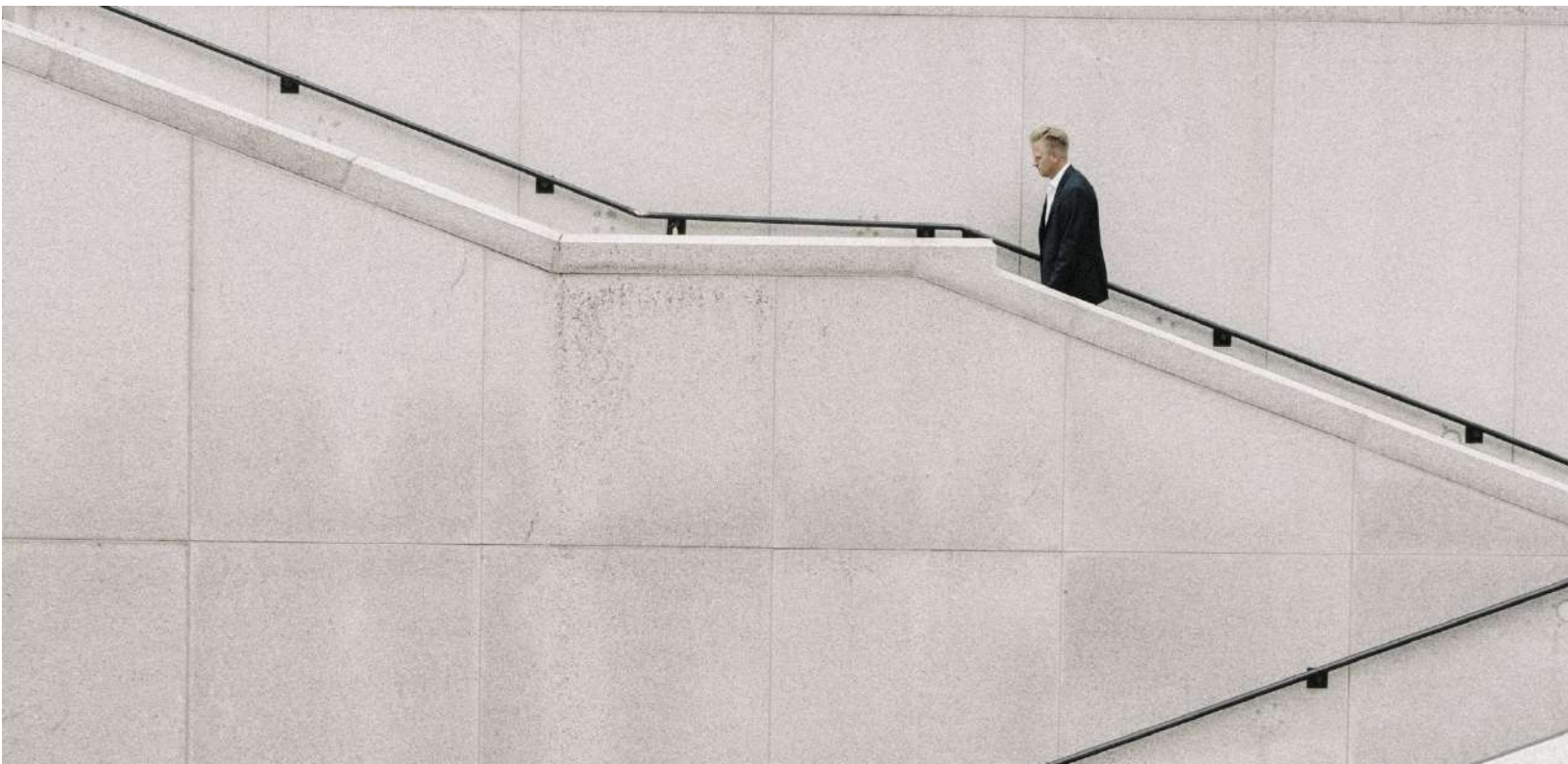
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