

## INTERNATIONAL TAXATION: THE CONSEQUENCES OF CONFINEMENT

The OECD has recently issued a paper recommending to the tax authorities of its member states that they act with certain magnanimity when assessing compliance with the tax rules in matters related to the period of lockdown.

We are going to analyse different circumstances in which, as a consequence of confinement or work at home in a different country from the usual one, important fiscal consequences can be derived both for companies and individuals:

- **Tax residence**

The fact that a person who is not a resident in a country is confined in it due to the health situation may, eventually, suppose that that person remains in it for a period of more than 6 months and that this eventually implies the tax residence of that person in the country of confinement during that fiscal year. Tax resident status would entail fulfilling the tax obligations of ordinary residents in that country.

The OECD recommends that the period of confinement is not taken into account for the purposes of determining tax residence. India, for example, has already issued a resolution adapting this same recommendation.

- **Cross-border workers**

As the employee cannot access his job in a different jurisdiction and has to do it from home, the work is performed in the country of habitual residence, and therefore, is no longer taxable in the country of the employer that pays the salary. The rule is that labour income is generally taxed where it is carried out and not in the country of the payer of the salary.

This is especially significant when it is the state of the employer that bears the costs of unemployment and the subsidies for the maintenance of employment. For this reason, the OECD recommends that states assume that work is carried out in the usual workplace and omit the circumstance of confinement. Luxembourg has already exchanged communications with its neighbouring countries to assume this interpretation in an agreed manner.

- **Effective management of companies**

The inability to access the workplace by the directors of a company which have to stay in a different country due to the lockdown, could imply that the company is deemed to be resident in the country from which it is managed, that is, where the directors reside. Companies can be considered residents of the countries where their effective management and control is located.

As we see, the casuistry can be very rich and diverse.

The papers issued by the OECD have the character of opinions and recommendations by this institution (soft Law), but they are not directly applicable by citizens who continue to be subject to full compliance of the rules.

However, given the exceptional situation in which we all find ourselves, the recommendations of the international institution can constitute a good base of defense for the taxpayer against a possible challenge of his fiscal situation by the administration