

Article: Corporate Tax Residence

Author: Demetris Papaprodromou

Publication Date: 12 February 2013

Subject Area: Tax

Corporate Tax Residence



CONTACT US

Address:

*Centaur House
2 Apostolos Varnavas
2571 Nisou, Nicosia,
Cyprus*

*Tel: +357 22 499 994
Fax: +357 22 499 984*

*PO Box 28779
CY-2082 Nicosia
Cyprus*

Email:

info@centaurtrust.com

CORPORATE TAX RESIDENCE

Corporate tax residence is currently a hot topic all over the world, as all countries seek to maximise tax receipts during the current difficult economic times. We have noticed an increase in corporate tax residency challenges in recent years, in terms of both the number of challenges, and their severity. These challenges are being made by a number of Governments around the world.

In some countries Special Investigation units have been established (UK, Israel, Ireland, France) to deal with such enquiries.

Why corporate tax residence is so important

Corporate tax residence is the concept by which the taxing rights over a company's profits and gains are determined. Different countries have different ways of defining corporate tax residence, which creates further complexity for companies operating in more than one country.

Furthermore, corporate tax residence is of importance as a company needs to ensure that it is only subject to tax in the jurisdiction it intends to be taxed in. If for any reason the company does not secure this right, it can end up having multiple tax liabilities in different countries.

Definition of Corporate Tax Residence

Definitions of corporate residence for tax purposes vary considerably from country to country. Some countries determine the residence of a company based on its place of incorporation. Other countries determine the residence of a company by reference to its place of management and control. Some countries use both a place-of-incorporation test and a place-of-management and control test.

We state below a few countries and their respective criteria on Corporate Tax Residency:

UK

A company is resident in the UK for the purposes of the Taxes Acts if

- it is incorporated in the UK (with certain exceptions) or
- the central management and control of its business is in the UK.

CONTACT US

Address:

Centaur House
2 Apostolos Varnavas
2571 Nisou, Nicosia,
Cyprus

Tel: +357 22 499 994
Fax: +357 22 499 984

PO Box 28779
CY-2082 Nicosia
Cyprus

Email:

info@centaurtrust.com

Israel

Section 1 of the Israeli Tax Ordinance provides that a corporate entity is considered an Israeli resident, if it fulfils one of the following criteria:

- was incorporated in Israel; or
- the control and management of its business is performed from Israel”

New Zealand

A company is resident in New Zealand if it meets any one of the following criteria:

- it is incorporated in New Zealand or
- the central management and control of its business is carried out in New Zealand

Singapore

In Singapore, the tax residence status of a company depends on where the control and management of its business is exercised.

A company is tax resident in Singapore if the control and management of its business is exercised in Singapore.

Cyprus

In Cyprus, the tax residence status of a company depends on where the control and management of its business is exercised.

MANAGEMENT & CONTROL

The place of central management and control as a test of residence is becoming established as the first rule that companies need to satisfy in order to avoid any tax adverse consequences. This is true in many countries now.

The mere fact that the company has been incorporated in a particular jurisdiction does not automatically make the company tax resident in that particular jurisdiction.

In most of the countries around the world there is no statutory definition of the meaning of “central management and control” but nevertheless court judgements on the meaning of central management and control can be treated and can be used as guidance on how the courts in a particular jurisdiction will interpret its meaning.

How court judgments are to be applied in a particular case involves a question of fact. This cannot be too heavily emphasised.

Due to the complexity in interpreting correctly management and control issues a separate article has been prepared analysing in greater depth this very important concept. Please click the link below in order to be diverted to the relevant article.

Article: [Management & Control](#)

ESTABLISHING EFFECTIVE MANAGEMENT AND CONTROL OF A COMPANY IN A PARTICULAR JURISDICTION

A company needs to ensure that it is only subject to tax in the jurisdiction it intends to be taxed in. To minimise the risk of inadvertently becoming tax resident in another country, the central management and control of the company should be undertaken in the company's territory of residence.

We believe that to establish effective management and control of a company in a particular jurisdiction we need to include sufficient elements from the guideline below. This list is not exhaustive and it is not implied that all the below should be followed in all cases. Rather, the below list is a broad guideline to be used, depending on the jurisdictions involved, the activities of the company and a number of other factors:

- All or the majority of the board of directors should be residents in the jurisdiction the company intends to be taxed in. If only the majority of directors reside there the majority should be enough to form a quorum for the conducting of board meetings under the articles of association. The minority directors who are not resident(s) should consider traveling to the country of company residence for occasional board meetings.
- Board meetings should actually be held in the country of residence and must be properly documented.
- The general policy of the company should be formulated in the country of residence. The place of effective management is generally understood to be the place where the Head Office is: the Head Office in the sense of - not the registered office - but the central directing source. That is major/important decisions such as the provision of loan facilities, the purchase of a significant interest in other companies etc should be taken by the board in the country of residence.
- The appointed directors of the company should be fit to hold office or be employed in the administration of the Company's affairs. When appointing a board of directors, the individual members should be persons of high caliber, such as successful business men, Chartered and Certified accountants, lawyers, or persons with a relevant background in relation to the company's proposed activities. The directors should have the knowledge and expertise to really understand and know the business activities of the company and should actually be part of the strategic decision making process of the company. They should not just rubber stamp any decisions taken by the shareholders or their advisors. They should formulate and implement the strategy of the company.

- With regards to decision making at Directors level, a minimum level of information should always be provided, that would enable the directors of a company to consider whether or not they should make a decision. It is also prudent to ensure that board minutes properly document the information the directors have used to consider and then make decisions.
- Related to the point above, care should be taken to ensure that the board meetings are properly documented, i.e. detailed notes taken outlining the matters for consideration of the board, and should include the information provided in the board pack to enable them to make their decisions.
- Company bank accounts should be controlled and operated by the resident directors. Money movements in the accounts should be properly documented, so that they are seen to be effected under the Control of the directors.
- Day to day management must actually be carried out in the country of residence
- Any issuance of POAs to third parties should be limited and when this is done the scope of the services assigned should be limited and specific. Of course the board of directors can still appoint agents and as long as they are mere agents they do not, by the bare fact of being there and fulfilling their agencies, detract from the management and control of the board. However, if the board assign all its powers to a person, i.e. by issuing a general power of attorney, or in reality that person exercises all of the powers of the board in such a way that the person purports to confer exclusive powers without expressly reserving a

right of supervision, then that person is the Board and the management and control of the company is carried out by that person. It follows then that a company's residence status should be where that person resides. That is the place where he takes all decisions concerning the administration of the company.

It may also be advisable to show a presence in the country of residence, thereby making the case for management and control stronger. The company should not be just a paper company. This can be done by:

- The company renting an office.
- Applying for telephone and fax lines to be installed.
- Employ people and pay monthly salaries and social contributions
- The Company should get a Social Security number and pay the relevant social insurance contributions for all its employees on a monthly basis.
- The company should be registered with local telephone directories.
- All local documents, application forms, rental agreements etc. should be signed by the resident directors.
- Last but not least, the company should have a valid commercial reason for its existence. Even though this can sometimes be a tax oriented reason, there should also be commercial benefits for setting up a company in a particular jurisdiction and the decision to establish a company in a particular jurisdiction should not be taken solely based on tax considerations.

CONCLUSION

A company can very easily inadvertently become tax resident and subject to tax in a different jurisdiction from the one it intends to be taxed in and thus incorporated.

By following the few simple steps outlined above, this adverse consequence can be avoided. Our experience shows us that many companies seek tax advice on corporate tax residence matters prior to establishing an offshore business, however, few seek further advice on implementation and maintenance of these structures. It is often during the implementation phase and thereafter that mistakes are made with regard to residence.

At Centaur Trust our focus is on the effective implementation of international tax structures related to the use of Cyprus or other Companies as standalone vehicles or as part of an international tax structure. We work closely with all major legal, tax and accounting firms worldwide and based on our Total Quality Management philosophy we translate high quality advice into high quality solutions.

CONTACT US

Address:

*Centaur House
2 Apostolos Varnavas
2571 Nisou, Nicosia,
Cyprus*

*Tel: +357 22 499 994
Fax: +357 22 499 984*

*PO Box 28779
CY-2082 Nicosia
Cyprus*

Email:
info@centaurtrust.com

Thank you



Demetris Papaprodromou (BA, MSc, FCA)
Managing Director

