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Provision of Cyprus Business Substance Solutions –The concept of substance and complying with the current requirements



Economic/ Business Substance in Cyprus

The absence of economic substance triggers an alert for the possibility of tax avoidance in many jurisdictions. There is an increasingly heightened risk that tax planning solutions will be perceived as tax abuse or, worse, tax evasion. Recent developments in both domestic and EU laws place great importance in economic substance emphasizing that international cooperation is the only way to minimize tax avoidance.

Under the OECD model convention, a company may qualify for tax treaty benefits if the following criteria, which are usually present in tax treaties, are met:

- 1. The company is a tax resident of the State it is registered in ; and*
- 2. The company is the beneficial owner of the income distribution (dividends, interest, royalties)*

Cyprus Tax Residency

Cyprus Tax Residency renders access to the Cyprus tax framework and to tax benefits arising from the Cyprus double tax treaty network.

Criteria for determining Cyprus Tax Residency

Under Cyprus tax law, a company is a resident taxpayer of Cyprus if its management and control is exercised in Cyprus. In its interpretation of management and control, Cyprus adopts the OECD Model Tax Convention and its Commentaries even though Cyprus is not a member of the OECD. The alignment of the Cyprus law with the OECD recommendations strengthens the Cyprus tax residency framework making it more likely to be respected in other jurisdictions depending on those jurisdictions' substance requirements.

The Cyprus tax authorities normally assume that a company having its majority of board members, statutory seat and board meetings in Cyprus is considered to be managed and controlled in Cyprus. It is however possible that a company which is incorporated in Cyprus is managed and controlled in another tax jurisdiction. In this case, the foreign tax authorities may re-classify the company as being resident in that foreign jurisdiction. The company may then be subject to taxation in the foreign jurisdiction unless successfully argues otherwise.

The place of effective management

According to OECD definition, the place of effective management is the place where key management decisions and commercial decisions that are necessary for the conduct of the entity's business are in substance made. The place of effective management will ordinarily be the place where the most senior person or group of persons (for example the Board of Directors) makes its decisions, the place where the actions to be taken by the entity as a whole are determined; however no definitive rule can be given and all relevant facts and circumstances must be examined to determine the place of effective management.

Place of incorporation VS Place of effective management

Management and control may not be at the same place as incorporation. A jurisdiction therefore that classifies as tax resident a company organized under its laws may seek to claim tax residency of the company, even though the company is managed and controlled in another jurisdiction. As such, it is possible that double taxation may occur. Double taxation may be avoided with the use of double tax treaties; in the absence of double tax treaties, relief from double taxation may be provided on the basis of the Cypriot provisions on unilateral relief.

In the event of a residency dispute under a double tax treaty, substance may be instrumental in allocating a taxpayer the desired treaty benefits; without adequate substance, a taxpayer

may be deemed as tax resident in another jurisdiction from that originally planned and subject to tax in accordance thereto.

Substance

Substance has a different meaning in each jurisdiction. For Cyprus, adequate measures will need to be taken proving that the company is managed and controlled in Cyprus and that substantive business operations are genuinely carried out in Cyprus.

Each company's formal arrangements, its administrative and operational structure should be considered separately taking into account the individual features of each case and should be assessed on the basis of the tax rules applicable in all jurisdictions concerned.

As a minimum however, the following principles should form a starting basis for a foreign jurisdiction to treat the company as a Cyprus tax resident:

- ***Board Composition:*** Having the majority of the directors (or any other management body) of the Board to be Cyprus tax residents is quintessential to Cyprus tax residency and substance. The Cyprus resident directors should be the top managers of the company and should be in a position to exercise the management function in full. This should be evidenced in the effective documentation of business transactions and by the fact that they form a quorum in a Board meeting.
- ***Board Procedures:*** Board meetings should be held in Cyprus, to discuss substantive issues relating to the management and control of the company and its investments. Being able to show that the steering management of the company is performed from Cyprus is an important substance component. Important strategic decisions should be taken in Cyprus as well as negotiations of major contracts. Documentation is important. At least one board meeting should be held every year at which all directors (resident and non-resident) should be

physically present. The use of proxies should be avoided so as not to discredit the substance test.

- ***Memorandum and Articles of Association:*** The Company's Memorandum and Articles of Association should include the necessary provisions to eliminate the risk of being viewed as having a taxable presence in another jurisdiction. For example, they should contain the requirement that all Board meetings should be held in Cyprus.
- ***Record Keeping – Archiving:*** Books and records, books of account, minute books, company seal and share register should be kept in the Cyprus office.
- ***Accounting Function – Bookkeeping:*** All financial and other transactions of the company should be prepared and kept in Cyprus. This includes the issue of invoices and receipts, the execution of documentation, and the carrying out of reporting and statutory requirements. Bookkeeping, preparing of management accounts, financial reports and financial statements in line with the IFRS should be performed in Cyprus. The accounts should be audited in Cyprus and their discussion and approval should take place in Cyprus.
- ***Personnel and Office Space:*** Personnel should be physically present in the office engaging in the company's activities in accordance with the business plan. To prove genuine management operations; the company's top management should be in Cyprus. A full-fledged office (computer, printer, dedicated phone, e-mail address, fax lines, etc.) should be maintained.
- ***Other Practicalities:*** Wide and general powers of attorney granted to non-tax residents of Cyprus should be avoided.



Cyprus Substance Solutions

Our firm has the experience and capacity to develop the best possible and solid substance tailored to your needs and operations.

➤ *Personalized Virtual Office*

Within the scope of this specific package, a separate business address will be provided which allows the company to maintain a distinct location at significant cost savings. Moreover, our Telecom and IT package and support services allow inter alia for maintenance of a dedicated telephone line and separate e-mail domain.

- ***Registered Office Address***
- ***Telecom and IT support Services***
- ***Logo design services***

➤ *Dedicated part-time shared Office*

Within the scope of this specific package, we will provide with an actual office space for rental, which may be shared with other businesses. In addition to our Telecom and IT package and support services, we offer a variety of services which can support your business locally and allow for efficient and professional handling of your company's business.

- ***Office space***
- ***Boardroom facilities***
- ***Telecom and IT support Services***
- ***Internet Access Services with fast line internet and WIFI***



- ***Dedicated Reception Services***
- ***Accounting Services***
- ***VAT and Payroll Services***
- ***Dedicated fixed IP address for e-mail/website***
- ***Logo design services***

Fully Dedicated Business Office

In this package we offer rental of dedicated furnished business office. The Client's office is permanently held and maintained only for the Client. This particular package is highly recommended for the Clients who wish to maintain a dedicated, fulltime office in Cyprus. It is our recommended solution for providing substance in Cyprus.

- ***Office space***
- ***Boardroom facilities***
- ***Telecom and IT support Services***
- ***Ancillary website and logo design services***
- ***Internet Access Services with fast line internet and WIFI***



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EPW Europe Private Wealth Ltd

We are a Cyprus based professional services firm, offering our clients tailor-made solutions for their specific needs and assisting in their implementation, adding value by supporting them in managing the ever-increasing complexities of the modern business environment.

Our Services

We offer a wide range of services to our clients which can be grouped into three categories:

- Audit Services
- Corporate Services
- Legal Services
- Tax Services
- Immigration Services
- Human Resources Advisory Services
- Office Solutions



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