

Company Tax Residency Requirements both in Cyprus and internationally



Determination of tax residency of a company

The determination of tax residency of a company is very important because it will determine:

- (a) the state which has taxing rights over the company and
- (b) the entitlement of tax treaty benefits under a bilateral double tax treaty.

The OECD model tax convention provides that for the purposes of the convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

Thus, a company can be considered as tax resident in the respective country either by reason of: (a) incorporation, (b) place of management or (c) jointly incorporation and place of effective management.

Conditions to be considered for the determination of company's residency.

It is generally accepted in line with international tax practices that the following conditions should be considered, in order to determine if a company qualifies as a resident for tax purposes of Cyprus for the purposes of granting double tax treaty benefits:

- a. All strategic (and preferably also day-to-day) management decisions are taken in Cyprus by the directors exercising their duties from Cyprus. This is usually achieved by conducting Board of Directors meetings in Cyprus and the by signing any written resolutions, contracts, agreements and other relevant company documents relating to the management, control and administrative functions of the company in Cyprus.
- b. The majority of the Directors of the company are tax residents in Cyprus and they also exercise their duties in Cyprus; The directors of the company are adequately qualified to manage the specific affairs of the company in question.
- c. An actual administrative office is maintained in Cyprus, where the actual management and control of the business of the company is exercised, with sufficient personnel and office facilities available to manage the affairs of the company.
- d. Hard copies of commercial documentation (agreements, invoices, etc) are executed in Cyprus and stored in the office facilities of the company.
- e. Accounting records of the company are maintained and kept in Cyprus, even though the accounting functions may be outsourced to local service providers.
- f. Bank accounts of the company are operated by official residents in Cyprus, even if the accounts are maintained with banks established outside Cyprus.

If the Cypriot tax resident company does not meet the above requirements, the presentation of a tax residency certificate obtained from the Cypriot tax authorities upon the presentation of the questionnaire would not be sufficient for the company to qualify as tax resident of Cyprus and obtain treaty benefits.

Company tax residency in Cyprus

Under the Cypriot tax laws, a company is considered to be tax resident of Cyprus, if its management and control is exercised from Cyprus. There is no definition in the Cypriot tax legislation of what are the management and control requirements and no detailed guidelines have been issued by the Cypriot tax authorities.

It should be noted that recently the Ministry of Finance has tabled a bill with the House of Representatives to change the definition of tax residency of a company incorporated in Cyprus which is managed and controlled outside Cyprus to be considered as a Cyprus tax resident, unless such company is considered tax resident in another state. This amendment will eliminate the possibility of a Cyprus incorporated company to be considered as non – tax resident anywhere.

Obtaining a tax residency certificate for a company

In order for a foreign tax authority to allow a Cypriot tax company to obtain benefits under a double tax treaty, they require the issuance of a tax residency certificate issued by the Cypriot tax authorities, confirming that the company is tax resident of Cyprus paying Cypriot taxation on its worldwide income and that qualifies as tax resident for the purposes of the respective double tax treaty.

The Tax Commissioner in Cyprus has issued a circular on the issuing of the tax residency certificate, which includes a questionnaire, which needs to be completed confirming the place of management of the company, prior to the issuance of the relevant tax residency certificate. Questions to be answered include:

- a. constitution of the board of directors and place of holding board meetings;
- b. place of holding shareholders meetings;
- c. granting of general powers of attorney;
- d. place of maintenance of books and records.

Request for exchange of information under a double tax treaty on tax residency matters

Most jurisdictions which have entered into a double tax treaty with Cyprus have strict domestic rules in order to establish tax residency of a company and qualification for obtaining treaty benefit. These jurisdictions include not only the USA, Canada, the UK, Switzerland and EU countries with sophisticated taxation systems, but also countries like Greece, Poland, Czech Republic, Russia and

Ukraine. When a foreign tax jurisdiction requests from the Cypriot tax authorities to exchange information on transactions between a Cypriot tax resident company and a taxpayer in that foreign tax jurisdiction, a number of the questions asked by the foreign jurisdiction relate to the issue of whether the company can be considered as a Cypriot tax resident or not. The questions usually asked relate to:

- a. Information on the company's directors, executives and other officials, including their country of tax residence.
- b. Availability of office facilities for the performance of the company's activities (size of the office and available office equipment).
- c. The availability of qualified staff to perform the activities of the company and their remuneration.
- d. Where and by whom important decisions of the company are taken.
- e. Qualification and tax residency of directors and frequency of the board meetings held.
- f. Whether the company has entered into outsourcing contracts for certain of its functions to any other entity/person.
- g. Details of any powers of attorney granted by the company.
- h. Details of bank accounts and the authorized bank signatories.

It is obvious that if the Cypriot tax resident company does not meet the above requirements, the foreign tax jurisdiction will refuse to grant double tax treaty benefits, despite the presentation of a tax residency certificate obtained from the Cypriot tax authorities upon the presentation of the questionnaire mentioned above.

Conclusion

In the past years, the mode of operations of a large majority of Cypriot based companies with no or minimum substance in Cyprus is no longer possible and such companies have or will find themselves prohibited from obtaining tax treaty benefits.

In this respect the companies should have reconsidered the way they operate and introduce all those substance requirements which will enable them to continue operating from Cyprus and taking advantage of the extensive network of double tax treaties and obtaining benefits (usually claiming reduced or no withholding taxes on the receipt of dividends, interest and royalties from that foreign tax jurisdiction).

How can EPW be of assistance.

- Review of existing structures and evaluation of the level of physical and economic substance in Cyprus, as well as the risks arising due to the existing structure.
- Recommendation on the actions that can be implemented in order to enhance the physical substance of the existing structure in Cyprus.
- Assistance with the implementation of the substance recommendations (i.e. providing office solutions setting up an office, drafting employment contracts, hiring employees, obtaining work permits etc).
- Constant administrative support (i.e. accounting, audit, payroll, tax compliance including assistance in the issuance of Tax residency certificates for companies and individuals).



Your Contacts for Tax Services at EPW EUROPE PRIVATE WEALTH LTD:

George Theocharous

Managing Director

Email: gtheocharous@epw.com.cy

Elena Chrysostomou

Head of Tax

Email: echrysostomou@epw.com.cy

Address

16 Ekaterinis Kornaro Str., 2015
Victory Athalassas Building, 3rd Floor
Nicosia, Cyprus
T: +357-22866060/ F: +357-22314113
www.epw.com.cy