

Cyprus Tax Residency for Companies

In accordance with Cyprus tax laws, a company is considered to be tax resident in Cyprus and thus in a position to avail itself of the favourable Cyprus tax regime, if its "management and control" is situated in Cyprus.

Practice indicates that the management and control signifies the ultimate level of policy decision-making or superior control (e.g. board of directors). As a result, it is always recommended that the board of directors of a Cyprus company consists of majority Cyprus tax resident directors and for all board meetings in which issues pertaining to the strategic and operational management of a company are discussed and resolved to take place in Cyprus. It is further recommended that no general powers of attorney are granted to non-tax resident individuals as such practice could jeopardize the decision-making powers and involvement of the company's directors.

Further to the above, numerous jurisdictions are currently in the process of challenging tax structures especially where they have evidence that the operational management (i.e. the day-to-day management of the business) which usually deals with the day-to-day administrative tasks (i.e. day-to-day decisions, management of bank accounts, contract negotiation, staff matters etc) is in fact carried out in a country other than the country of registration of the company (i.e. not in Cyprus).

It is generally expected that a company must have all necessary resources and infrastructure that allows it to conduct its business (e.g. perform activities and manage risk) and to this respect it needs to create business substance in order to support the view that its existence in Cyprus is not driven merely by a desire to obtain favourable tax treatment. Different levels of substance should be applied to different types of activities

e.g. holding, financing, trading, and should depend on the extent of the activity, the business sector and the risk assumed.

To sum up, the below represent examples of measures which can be taken in order to create business substance for a Cyprus entity and ensure the Cyprus management and control and hence tax residency of the company:

- ▶ Important decisions are taken in Cyprus
- ▶ The majority of corporate directors (board members) are Cypriot residents
- ▶ There is no broad transfer of powers to non-Cypriot resident persons (e.g. general powers of attorney are not issued to non-residents)
- ▶ Accounting is carried on in Cyprus
- ▶ Hard copies of documentation are kept in Cyprus
- ▶ An office is maintained in Cyprus
- ▶ Bank accounts are operated from Cyprus

We are currently in the process of assisting Cyprus companies to create a substantive and credible Cyprus based structure in line with Cyprus taxation laws and mitigate the risk, to the extent possible, so as to help counter possible challenges by foreign (other than Cypriot) tax authorities (in co-operation with tax advisers within those jurisdictions). As part of this process we strongly recommend the appointment of experienced directors from our office who will be involved with the company's strategic and operational decision-making processes.

In addition, in order to better combat any possible challenges from an operational management perspective, we strongly recommend that these directors also act as bank signatories on the company's bank accounts which could be situated either in Cyprus or abroad.

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The bank account is usually a company's major asset and thus it is recommended that such is considered to be managed from Cyprus by the company's directors in order to strengthen the company's management and control links to Cyprus and hence its Cyprus tax residency.

In cases where there are also foreign directors on the board of directors, joint bank signatories may also be arranged. In such exceptional cases, our firm will arrange for the preparation of the transfer forms and we will forward these electronically or in faxed form to all bank signatories, for signature and then ensure prompt execution of our clients instructions by transmitting the same to the bank via our secured fax facility specifically arranged between our firm and the Cyprus banks.

It is further important for the accounting of the company to be performed in Cyprus and all hard copies of documentation to be available at the company's registered office.

Ensuring the Cyprus tax residency is the most important element for a successful tax structure and efficient tax management. At the same time complying with local laws and banking regulations is also of vital importance.

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Our Corporate and fiduciary department provides company formation, company management, banking, accounting, substance and other services needed in order to maintain a Cyprus company in good standing. Our Tax department provides services in the fields of corporate and personal taxation, asset and wealth management, international tax planning and representations at the tax office and tax tribunals.