



Residence of Companies and Corporation tax

For a liability to UK corporation tax to arise on corporate profits, the company must either be resident itself in the UK, or trading in the UK through a branch or agency (in which case the UK tax charge is limited to the profits of the UK operation).

If the company is resident in the UK, its worldwide profits are liable to UK corporation tax, that is profits and gains arising in the company, no matter where in the world the transactions that realised the profit were concluded.



Companies Incorporated in the UK

Broadly this means it is a company incorporated under the laws of the UK, in most cases the Companies Act 1985 and the Companies Act 2006. It should be evident from the company's incorporation documents where the company is incorporated.

Companies Incorporated outside the UK, but centrally managed and controlled from the UK

Companies may be resident in the UK for corporation tax purposes even though they are not incorporated here, if their central management and control are situated in the UK.

“Central management and control” is a grey area, but is generally taken to mean the country where the highest level of decision making in the company is located rather than where the day to day management is situated. Although central management and

control may often reside at the place where the main operations of a business are carried on, this may not always be the case. Therefore it may be that a Board of Directors sits outside the UK, but if that Board is not exercising strategic decision-making regarding new acquisitions, financing, expansion plans and the like, but that control is exercised from the UK there is a risk the company may be UK resident.

Practical Matters

Many owner-managed businesses that do trade overseas are often attracted by the allure of lower tax rates in other jurisdictions, such as Ireland and may wish to situate subsidiaries in these

jurisdictions to take advantage of the more benign tax regime.

However, it should be remembered that in order to ensure that such a subsidiary is not UK resident for corporation tax purposes, central management and control of that company must be situated outside the UK.

For smaller businesses, where decision-making is focussed on a small number of individuals, who are themselves located in the UK, it may be difficult to demonstrate that those individuals do not exercise central management and control over the overseas company, despite that company having a general manager in the territory of incorporation to administer the day to day running of the company. If, on investigation by HM Revenue & Customs, the company is deemed to be UK resident, by virtue of its central management and control being located in the UK, it will be liable to UK tax on its worldwide income and gains.



Dual Residence

Occasionally, a company may be resident in two countries due to it being incorporated in one country and centrally managed and controlled from the other. A company is ultimately unlikely to be “dual resident” and it is usual to examine the tax treaty in place between the two countries, to establish which country has the primary taxing rights, and therefore where the company is resident.

Most tax treaties have “tie-breaker” clauses that are designed to operate in these circumstances and aid decision-making as to the residence of the company. However, tax treaties do differ widely and therefore no two such clauses are likely to be the same.

Immigration and Emigration of companies



Companies can be brought within the UK tax net by a change in the location of central management and control, however, there may be complications in respect of the country where the company is moving from, such as exit charges and the crystallisation of any gains. These issues must be considered carefully prior to any change of residence occurs.

It is possible to emigrate companies out of the UK, however, there are complex procedures and clearances that must be followed that are outside the scope of this helpsheet

Anti-avoidance provisions

There are special rules to negate or restrict a tax advantage where a company is situated overseas and particularly in a tax haven. These rules can apply to individuals or corporate structures

involving overseas subsidiaries and as each situation differs, specialist tax advice should always be sought in these circumstances.

Summary

It is straight forward to establish where a company is incorporated, but less easy to pinpoint where central management and control is located. In smaller, owner managed companies where high-level decision-making is in the hands of a small number of individuals, it may be difficult to maintain that an overseas company is not centrally managed and controlled in the UK and as a result, resident in the UK for corporation tax purposes.

Professional advice should always be sought with regard to these complex issues before implementing any overseas expansion plans.



Further Information

For more information please contact **Dominic Bourquin** who will be pleased to help on **01225 472800** or e-mail **dominicb2@monahans.co.uk**