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## PRACTICE NOTE

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PN 208/20

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### TAX RESIDENCE OF COMPANIES AND OTHER CORPORATE TAXPAYERS

This Practice Note replaces paragraphs 16-20 of PN 144/07 'Tax Residence in the Isle of Man'.

It applies to companies and other corporate taxpayers that have separate legal personality.

#### 1 Introduction

The residence of a company is a key factor in determining its tax treatment, liabilities and reporting obligations under the Income Tax Act 1970 and related statutes.

A key principle of the Income Tax Act 1970 is that income tax is payable in the Isle of Man on:

- the worldwide income arising or accruing to any person residing in the Isle of Man, and
- on income arising or accruing from sources in the Isle of Man to any person not residing in the Isle of Man

#### 2 How the Tax Residence of a Company is Established

The Isle of Man applies a combination of both the place of incorporation and the place of central management and control of the company in determining the tax residence of a company.

##### 2.1 Residence by Incorporation

Section 2N Income Tax Act 1970 states that, for the purposes of the Income Tax Acts, all companies incorporated in the Isle of Man are resident in the Isle of Man.

Section 2N also contains a specific provision for such companies to be considered as not resident for income tax purposes in certain circumstances. This provision is covered in more detail later in this note.

##### 2.2 Residence by Central Management and Control

A company incorporated outside the Isle of Man is regarded as tax resident in the Isle of Man when its central management and control is exercised in the Island.

Determining the tax residence of a company by virtue of its central management and control is a principle rooted in case law. The Assessor refers to relevant UK case law for guidance as to the meaning of the term 'central management and control' as there is no applicable Isle of Man case law.

As at the date of this Practice Note the Assessor's approach has its basis in three key UK cases concerning establishing the residence of a company by virtue of its management and control. Those cases are:

1. De Beers Consolidated Mines Ltd v Howe (5 TC 198),
2. Bullock v Unit Construction Company Ltd (38 TC 738), and
3. Laerstate B.V. v Commissioner of Revenue & Customs ([2009] UKFTT 209)

The Assessor considers the central management and control of a company to be the highest level of management and control, which is separate to the day to day operations and the administration of the company.

The central management and control of a company is generally exercised through its Board of Directors, but the actions of others can also constitute management and control.

A meeting of the Board of Directors is one forum where the strategic decisions and management decisions for a company can be taken, but a director can exercise their power of management and control in many other situations.

Where the directors meet is an important factor, but only in so far as the directors are the persons exercising control, and the directors' meetings are the medium through which their control is exercised.

When considering whether a company is tax resident by virtue of its central management and control, the Assessor will generally consider:

- Whether the directors exercise the central management and control, and
- If so, where they exercise that central management and control, or
- If the directors do not exercise the central management and control, who does exercise it and where is this exercised.

The findings in the key cases demonstrate that the wider management activities are also a significant factor in determining the location of the central management and control of a company, and that taking central management and control to mean just the board meetings, resolutions and the signing of documents is too narrow an interpretation.

Generally if the Board of Directors on the Isle of Man are giving effect to decisions taken outside the Island, or are simply following the instructions of persons outside the Island, the central management and control of the company is not located on the Isle of Man.

The question of where central management and control is exercised is one of fact, and may change from one period to the next.

All companies that are tax resident in the Isle of Man must be registered with the Assessor.

If the tax residence status of a company is in doubt, appropriate enquiries should be made with the Assessor.

### **3 Dual Residence**

It is possible for a company to be tax resident in more than one jurisdiction, for example a company incorporated in the Isle of Man may be centrally managed and controlled in the United Kingdom, or vice versa.

In that situation the company would be taxable in line with the applicable tax statute in both of those jurisdictions, and may be subject to double taxation as a result.

If there is a Double Taxation Arrangement ('DTA') in place between the two jurisdictions where the company is resident for tax purposes, there may be an article which determines where the company is considered to be resident for the purposes of the allocation of taxing rights under that particular DTA.

Where the company is resident for the purposes of a DTA is referred to as '*Treaty Residence*' and is to be determined in line with the specific article of the relevant DTA.

It is important to note that Treaty Residence being in the other jurisdiction does not change the tax residence position of the company under domestic law. The purpose of Treaty Residence is to allocate the taxing rights of the various income sources of the company to the jurisdictions in line with the terms of the applicable DTA.

#### **4 Company Transfer of Domicile (place of incorporation)**

The statutes that permit a company to transfer domicile (place of incorporation) in the Isle of Man is the Companies (Transfer of Domicile) Act 1998 and Part XI Companies Act 2006.

A company incorporated in the Isle of Man which is transferring domicile (place of incorporation) to another jurisdiction will cease to be tax resident in the Island by virtue of its incorporation on the date that the transfer of domicile takes place.

If the central management and control of the company will be exercised in the Isle of Man after that date, the company will be required to register as tax resident in the Island as a company incorporated outside the Island. (See 6.1 below)

A company incorporated outside the Isle of Man which is transferring domicile (place of incorporation) to the Island will commence tax residence by reason of incorporation on the date that the transfer of domicile takes place and it is added to the Isle of Man register of companies.

#### **5 Isle of Man Incorporated Companies - Applications for Non-Residence under Section 2N Income Tax Act 1970**

As stated earlier, section 2N Income Tax Act 1970 contains a specific provision in subsection (2) which allows a company incorporated in the Isle of Man to apply to be considered as not resident if it can prove certain facts to the Assessor.

A company will be considered not resident in the Isle of Man if it can prove to the satisfaction of the Assessor that —

- (a) its business is centrally managed and controlled in another country; and
- (b) it is resident for tax purposes under the other country's law; and
- (c) either —
  - (i) it is resident for tax purposes under the other country's law under a double taxation agreement between the Isle of Man and the other country in which a tie-breaker clause applies; or
  - (ii) the highest rate at which any company may be charged to tax on any part of its profits in the other country is 15% or higher; and
- (d) there is a bona fide commercial reason for its residence status in the other country, which status is not motivated by a wish to avoid or reduce Isle of Man income tax for any person.

#### **6 Application Process**

This section sets out the administration process to be followed by companies in order to register as tax resident, or to be considered as not resident in the Isle of Man.

Specific application forms for each scenario will shortly be published on the Forms pages of the Division's website.

## **6.1 Registration as Tax Resident – Companies Incorporated Outside the Island**

All companies incorporated outside the Isle of Man which are tax resident because they are centrally managed and controlled in the Island are required to register with the Assessor.

In order to register as tax resident in the Island, the company must provide sufficient evidence to prove that the company is managed and controlled in the Isle of Man, plus all other information requested on any application form published by the Assessor.

The company's reporting obligations under the Income Tax Act 1970 apply with effect from the date that the company became tax resident in the Island.

## **6.2 Cessation of Tax Residence – Companies Incorporated Outside the Island**

Tax residence of a company incorporated outside the Island may cease because the central management and control of the company is no longer exercised in the Island, or because the company is being removed from the register in the country of its incorporation i.e. is ceasing to exist.

If a company incorporated outside the Isle of Man ceases to be tax resident in the Isle of Man, it should notify the Assessor as soon as possible providing evidence that the company is no longer managed and controlled in the Isle of Man or has been removed from the register in the country of incorporation, plus all other information requested on any application form published by the Assessor.

## **6.3 Section 2N Applications for Non-Residence**

Applications for a company to be considered not resident in the Isle of Man must be accompanied by the following evidence:

1. Details of the person(s) exercising the management and control of the company, the forum and the manner in which this is exercised.
2. Evidence of the central management and control being exercised in the other jurisdiction.
3. A certificate of tax residence issued by the taxation authority in the other jurisdiction, confirming the date that the tax residence in that jurisdiction under domestic law commenced.
4. Evidence that the company is considered to be Treaty Resident in the other jurisdiction under the terms of the tie-break clause in the DTA in place between the jurisdictions.

Note: If a company is relying on this condition, specific confirmation will be required from the other jurisdiction that the company is considered to be Treaty Resident there. A certificate of tax residence under the domestic law of the jurisdiction is not sufficient evidence.

Some jurisdictions may include confirmation of treaty residence as part of the certificate of residence, but others may not. It remains the responsibility of the applicant company to obtain the necessary evidence from the other jurisdiction.

**Or**

4. Evidence that the company is/will be subject to tax in the other jurisdiction at a rate of 15% or more.

Note: If the jurisdiction has a rate of tax applicable to companies of 15% or more but the company is not subject to that rate, the company will not be able to satisfy this condition.

5. An explanation of the commercial rationale for the company being incorporated in the Isle of Man but being centrally managed and controlled in the other jurisdiction, and that this is not motivated by a wish to avoid Isle of Man income tax for any person, or for the company to fall outside the scope of the Economic Substance legislation in the Isle of Man (Part 6A Income Tax Act 1970).

If the necessary information and evidence is not provided and/or the required conditions cannot be evidenced to the Assessor's satisfaction, she will not accept the company's application to be considered not resident and the company will continue to be tax resident in the Isle of Man under domestic law by virtue of its incorporation.

It should be noted that there are sanctions in section 80J Income Tax Act 1970 for avoiding or seeking to avoid the application of Economic Substance legislation (Part 6A Income Tax Act 1970). It is therefore necessary for it to be proved to the satisfaction of the Assessor that there was no intention to avoid or seek to avoid these provisions.

If the Assessor is satisfied that the company is not resident, its future income tax obligations will be those of a person not resident in the Isle of Man.

The company will be required to file non-resident income tax returns containing details of all income from a source in the Isle of Man from the date that it ceases to be tax resident, and will also be required to comply with the obligations of any applicable third party reporting and deduction regulations.

The company should also consider if it continues to have reporting obligations to the Assessor in relation to the Common Reporting Standard.

## **7 Certificate of Tax Residence**

On application, the Assessor may issue a Certificate of Tax Residence which states that a company is tax resident in the Isle of Man under domestic law.

If another certificate is required in the future, the company will be required to confirm its continued tax residence in the island.

Certificates of Tax Residence are provided in paper format only and will be signed, so that the company can have the document apostilled. Certificates will be supplied free of charge.

Note: A Certificate of Tax Residence may also include confirmation that the company is considered to be Treaty Resident in the Isle of Man under the terms of a specific DTA.

If this is required, the company must specify in its application why the certificate is required, the applicable DTA and evidence to support that it is Treaty Resident in the Isle of Man.

## **8 International Reporting Obligations**

In addition to the reporting obligations within the Income Tax Act 1970, companies may also have reporting obligations under various international compliance legislation.

All companies must consider their position in relation to these obligations and ensure that all necessary reports are made to the Assessor.

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This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.