



International
Fiscal
Association

International Tax Bulletin

IFA Ukraine

Issue #1(12)

February, 2016

Contents

Cyprus Companies and Substance developments

by Christiana Nicolaou,
Tax Consultant, Eurofast



www.ifa-ukraine.org
ifa@ifa-ukraine.org

Topic of the Issue:
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Christiana Nicolaou,
Eurofast Taxand Cyprus
T. +357.22.699.222
E. christiana.nicolaou@eurofast.eu

As the need for tax efficient structures has been magnified with the recent global economic downturn and the increased scrutiny from tax authorities worldwide, companies need to carefully select the jurisdiction they use for implementing such structures, while also being very careful about substance, so as to be able to mitigate any risks and taxes.

Cyprus is an established international business and financial centre due to the many incentives, the good infrastructure that's in place, and its considerably extensive network of Double Tax Treaties [DTT's]. Also, Cyprus' EU membership and compliance with EU and OECD standards, together with its tax regime and transparent legal system, places the island amongst the most favourable holding company jurisdictions.

Recent Developments – The new Cyprus Tax Residency Certificate application form:

Furthermore, in light of recent global trends favouring transparency and intelligibility in the international tax era, the Cyprus tax authorities, on 30th October 2015, took a new measure towards strengthening the soundness and legality of the Cyprus Tax Residence Certificates by introducing a thorough Questionnaire-Checklist Form as an application for the issuing of these Certificates.

This update was announced by the Cyprus Inland Revenue through a circular presenting the launch of a new form, T.D. 98, necessary to be completed before the issuance of a tax residency certificate to a legal person is processed. It is also possible that the tax authorities may need to request additional clarification and in such cases the corresponding tax officers will be contacting the respective applicants.

The new questionnaire checklist form has a clear purpose of supporting the Substance parameter as an underpinning foundation to Cyprus Companies.

Amongst other things, the following information will need to be furnished to the Cyprus Tax Office, by the legal person / legal entity applicant:

- Whether the company is tax resident only in Cyprus;
- If the company is not only tax resident in Cyprus, documentation from the other jurisdiction where it also has tax residence;
- Information as to whether the majority of the Board of Directors' meetings take place in Cyprus and whether their minutes are prepared and kept in Cyprus as well. Additionally, informa-

- tion regarding whether the majority of the members of the Board of Directors are tax residents of Cyprus, as well as whether the shareholders' meetings take place in Cyprus too;
- Information as to whether the Board of Directors exercises control and makes key management and commercial decisions necessary for the company's operations and general policies;
 - Information as to whether the company has issued any General Powers of Attorney, and the terms and conditions thereof;
 - Information as to whether the company's corporate seal and all statutory books and records are maintained in Cyprus, whether filing and reporting functions are performed by representatives located in Cyprus, and whether agreements relating to the company's business or assets are executed or signed in Cyprus;
 - Updates as to whether all due tax returns have been filed, and all self-assessments for the tax years that are due have been paid.

Therefore, the procedure preceding the issuing of a Cyprus tax residency certificate is not a simple matter as all the above-presented elements need to be in line with the essence of a Cyprus tax-resident legal entity.

The Management and Control notion & Economic Substance:

Overall, the tax residency of a Cyprus company is determined by the underlying principles of the notion of 'Management and Control'. Additionally, in the absence of a formal definition regarding the establishment of the management and control, it is advisable that the following parameters be taken into account:

- The majority of the Directors of the Company are residents in Cyprus;
- The headquarters of the company are maintained in Cyprus;
- Important company decisions are taken in Cyprus by the local directors, and also it is recommended that the Memorandum and Articles of Association of the Company, allow only for Special Powers of Attorney [SPoA] to be issued by the Directors as opposed to General ones. These SPoA further need be clearly specifying the exact activity to be undertaken by the attorney, [e.g. only some particular transaction in a certain area of activities]. This measure acts as a safeguard towards the monitoring of the business solely by the Directors, since they are the ones originally entrusted with the managerial function and thus appointed by the shareholders of the Company;
- Moreover, the company needs to have economic substance in Cyprus.

Indeed, economic substance has become a very important issue too, and an increasing number of countries are looking deeper and deeper into the 'substance over form' doctrine.

However it would be a rather ambitious endeavour to try to codify what actions need be taken by any company to enhance its substance as this simply

cannot be an exercise of generality. What's needed though is careful planning and sophisticated tax advice in order to determine this parameter.

Additionally, a number of important considerations and factors need be taken into account by an experienced tax person in this context, including, indicatively, the following:

- The nature and operation of the company and that of the Group the company belongs to;
- The business strategy of the Group;
- The legal and management structure of the Group as a whole;
- The country where the Group's head office is located. This is important so as to comprehend the approach and the tax requirements of the tax authorities of the head office country;
- The country in which the investment is taking place.

Furthermore, as structures could differ, with some varying examples being trading-related structures, Intellectual Property handling structures, intra-group financing ones, or holding structures, it follows that a distinctive approach and a differing focus on corresponding relevant matters is required for each.

However, as an all-purpose note, the following are some common characteristics of substance for

Cyprus companies, usually referred to by most tax consultants:

- Having a real physical presence in Cyprus, whether through an owned distinct office or via leasing space at a serviced business centre;
- Having people working part-time or full-time at the company's offices;
- Having dedicated telephone, facsimile, and internet lines, as well as a website and electronic mail addresses;
- Owning at least one bank account maintained with a Cyprus bank, and operated by a Cypriot member of the Board of Directors;
- Maintaining proper accounting books and records in Cyprus, and preparing timely annual Audited Financial Statements, submitting promptly all annual tax returns, and settling promptly all relevant tax amounts due.

As already addressed, the above include only some guiding pieces of information, as the exercise of enhancing substance requires a case-by-case tailored approach.

What's more, is that the Cyprus tax authorities on their own initiative can always proceed to disregarding and disapproving of transactions which are not based on 'substance over form' or are not in line with the 'arms-length principle'.