



TALIADOROS AUDIT FIRM

CHARTERED CERTIFIED ACCOUNTANTS

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TAX RESIDENCY AND SUBSTANCE FOR CYPRIOT COMPANIES

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Tax Residency and Substance for Cypriot Companies

A company which is tax resident in the Republic of Cyprus is taxed on income arising or accruing from sources within Cyprus and outside the Republic.

A non-tax resident company is taxed only on income arising or accruing from sources within Cyprus.

Tax Residency Requirements

The Cyprus tax residency requirement is a company to be managed and controlled from Cyprus.

If a company is tax resident under domestic legislation in two different countries, in such a case the place of effective management overrides. The substance requirements of the other country involved will have to be considered.

Cyprus tax legislation does not define what the management and control requirements are. It is commonly accepted that the following conditions should be considered in determining if a company qualifies as a tax resident of Cyprus:

1. Where do the board meetings take place and where the board minutes are prepared and kept?

The board of directors meetings should take place in Cyprus. All board of directors minutes of the meetings are prepared and kept in Cyprus. All filings required by statute are submitted and filed by the directors and/or secretary who exercise their duties from Cyprus.

2. Does the board of directors exercise control and take decisions over the main business and commercial matters that are required for the day to day running of the business?

All strategic management decisions should be taken in Cyprus by the directors exercising their duties from Cyprus. All contracts, agreements and company documents relating to the management, control and administrative functions of the company are signed and kept in Cyprus.

3. Is the majority of the board of directors Cyprus tax residents?

The majority of the directors should be tax resident in Cyprus and exercise their duties from Cyprus.

4. Does the majority of the shareholders' meetings take place in Cyprus?

The shareholders meetings should take place in Cyprus.

5. Where are the accounting records kept?

The accounting records are prepared and maintained in Cyprus. The corporate seal is kept in Cyprus.

6. From where are the bank accounts of the company operated?

Irrespective of the fact that bank accounts are maintained with Cypriot or foreign bank, within or outside Cyprus, the accounts should be operated from Cyprus.

7. Is there any general Power of Attorney in place?

A general Power of Attorney (POA) indicates that the person(s) who holds it exercises management and control over the company. General POAs issued to Cyprus non-tax residents must be avoided.

Substance Requirements

Substance can be distinguished in three types, the statutory, the physical and the economic substance.

Statutory substance means to prove that a company is a “real” company and not a conduit; this is achieved by making sure that the company meets all of its statutory obligations on time including paying its taxes, filing its tax returns and preparing audited financial statements.

Physical substance includes statutory substance and in addition to it, having an office, having telephone facilities, employees and properly qualified directors.

Economic substance is the operational reality of a corporate structure and has to do with the day to day activities of a company; the existence of a company in Cyprus should have an economic purpose aside from the reduction of tax liabilities, otherwise the lack of economic necessity would also imply lack of genuine economic activity. So, the question to answer is: Is the company in Cyprus really necessary from an economic perspective in the overall corporate structure of an enterprise (or, say, was it established just to benefit the applicable double tax treaties)?

Proving that there are business reasons for setting up a company in Cyprus would also be advantageous in defending claims by tax authorities for treaty shopping.

In addition to the pre-mentioned tax residency conditions, the following actions and measures would indicate that in substance a company is tax resident in Cyprus:

1. Who the directors of the company are and what is their business background?

The directors’ experience and qualifications should be relevant to the company’s business and should suffice under the circumstances. The directors should be able to allocate to the business of the company adequate time. Senior executives (decision makers) must be located in Cyprus.

2. How the directors take their decisions?

The directors should take all the decisions on their own without having any other person instructing them on the actions or decisions to take.

3. A company should maintain a fully-fledged office which is run and operated by the company’s employees and decision makers. The number of employees should be appropriate under the circumstances. Shared service centers are not encouraged.

- 4. The accounting functions are carried out in Cyprus.**
- 5. The human resource functions (where necessary) are carried out in Cyprus.**
- 6. The Cyprus company incurs local costs and the level of these costs compared to the overall running costs is reasonable to prove substance.**
- 7. The company's address should not coincide with that of several other companies and the director(s) should not be director(s) in several other companies.**

Depending on the type of a company, the substance requirements may vary. Some examples are the following:

Holding companies

- Statutory substance is required, physical substance may be required
- A holding company with one or two investments only requires minimum physical substance.
- A holding company which buys and sells regularly investments and regularly declares dividends requires more physical and sometimes economic substance as well.
- The directors need to prove that have adequate knowledge to accept or reject a complicate Share Purchase Agreement, without receiving instructions from others (i.e. the UBO), but of course to the best interests of the owners.

Financing and licensing companies

- Statutory substance is required, physical substance may be required
- A financing company with one or two loans and the only decision to take is to assess the liquidity of the company on an annual basis, then only requires minimum physical substance. Similar considerations apply for a licensing company.
- A financing company which provides regularly loans and receives interest more often, then requires more physical substance and sometimes economic substance as well. Similar considerations apply for a licensing company.
- The directors need to prove that have adequate knowledge to accept or reject granting a loan, without receiving instructions from others (i.e. the UBO), but of course to the best interests of the owners.
- For complex structures, a director with finance or intellectual properties background may be required.

We look forward to assisting you in these matters. All the above can be discussed and elaborated based on your company's current structure and affairs.