



## CyF Publications

Current International Tax Developments:

Substance Requirements

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To qualify as a Cyprus Tax Resident, the management and the control of a company must be exercised from Cyprus. This means that the company should have a registered address in Cyprus, the majority of its directors must be Cyprus tax residents and most of their meetings should take place in Cyprus.

Faced with declining tax revenues and pressure from the public and the media, governments around the world are showing increased hostility towards legitimate tax avoidance. Consequently, there is no guarantee that tax authorities in other jurisdictions will accept that companies which merely satisfy the above requirements are Cyprus Tax Residents. On the contrary, they will be inclined to deny treaty benefits to structures which they consider to be artificial, in other words, to those with no business rationale or insufficient substance.

It is therefore important to pay special attention when designing and implementing an international tax structure in order to minimize the risk of a successful challenge over tax residency.

The following issues need to be considered:

## **Management and Control VS Effective Management and Control**

The place of effective management and control is where key management and commercial decisions are made. If the board in Cyprus merely gives formal approval to decisions that have already been made elsewhere, then it can be argued that the company is not a Cyprus Tax Resident or that it has a permanent establishment abroad. It is, therefore, important that the board consists of qualified individuals that have all relevant information before them in order to make informed decisions regarding key issues.

## **Office Requirements**

It is strongly recommended that an actual office is maintained in Cyprus where the management and control, and preferably also the day-to-day administration, of the company are exercised. Furthermore, the office should have a telephone and a fax line.

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## Staff Requirements

In order to enhance their substance, companies should employ an adequate number of qualified staff to run their business from Cyprus. This, however, depends on the type of business performed by each individual company.

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## Record Keeping Requirements

Hard copies of all relevant documents, such as corporate documents, agreements, invoices and so on, should be kept in the Cyprus based office of the company.

## Accounting Records

The accounting records of the company should be prepared and kept in Cyprus.

## Bank Accounts

The bank accounts of the company, regardless of whether they are based in or outside Cyprus, should be operated from Cyprus as it can be argued that the effective management and control of the company is where its funds are managed from.

## Web Presence

The company should have an e-mail address and a website.

**Our View:** In an increasingly complex and ever-changing tax environment it is important to be pro-active. The issue of substance needs to be addressed carefully in order to limit the exposure of structures to international anti-avoidance rules which might result in losing double tax treaty benefits.

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