



AUDIT • TAX • ADVISORY

MANAGEMENT AND CONTROL

In accordance with Cyprus tax law, a company is considered to be a tax resident in Cyprus and consequently, in a position to avail itself of the favorable Cyprus tax regime, if its “*management and control*” is situated in Cyprus. The term “*management and control*” is not explicitly defined within Cyprus tax legislation nonetheless, the concept generally derives from the current tax legislation act of 2002 (N. 118(I)/2002) as amended and a series of Court Decisions. In light of the above, it is broadly accepted that the term “*management and control*” constitutes the ultimate level of policy decision making and superior control within the company.

Indicated below are various measures and recommendations that should to the greatest extent possible, be both taken into consideration and implemented, in order to create business substance for a Cyprus entity and consequently, tax residency of the company:

1. All board meetings in which issues pertaining to the strategic and operational management of the company are discussed and resolved to take place in Cyprus, always in written format – resolutions.
2. The majority of corporate directors (board members) are Cypriot residents.
3. The company should hold scheduled board meetings at least once every 3 months.
4. Any and all information provided to the board of directors should be sufficient, so as to ensure that the directors are in a position to make accurate and necessary decisions for the Company.
5. There should be sufficient evidence such as documentation, previous resolutions and rationales justifying and validating any subsequent decision made by the board of directors.
6. It is also recommended that the majority of tax resident directors are educated individuals depending on the company’s main activities and are characterized by a clear tax history.
7. The Company should have all necessary recourses and infrastructure that allows it to conduct its business depending on the company’s main activities.
8. The directors should be accountable for their actions and they should not act passively in accordance to the instructions offered by the Ultimate Beneficial Owner.
9. Strictly avoid all board transfer of powers to non-Cypriot resident persons. This clearly indicates that the issuance of General Power of Attorneys to non-Cypriot residents should not under any circumstances be permitted. To the contrary, a Specific Power of Attorney may be issued, if deemed warranted. Explicitly, a Specific Power of Attorney is considered necessary when a non-Cypriot director is required to be physically present at the place where the activities will be executed.
10. The directors should sign and execute all relevant documents concerning the Company.



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11. There should be no indication and/or evidence supporting the view that the Company's existence in Cyprus is merely driven by the desire to obtain favourable tax treatment.
12. A registered office/ physical presence maintained in Cyprus.
13. All Bank Accounts are opened and operated from Cyprus.
14. The company's directors should act as bank signatories on the company's bank accounts, which may be situated in Cyprus or abroad.
15. Accounting of the company should be performed in Cyprus.
16. Hard copies of documentation should be available at the company's registered office in Cyprus.
17. The company may recruit and hire employees.

The case law rule for determining the residence of a company is authoritatively expressed in Lord Loreburn's speech in ***De Beers Consolidated Mines Ltd v Howe 30 July 1906 [1906] A.C. 455:***

“A company resides ... where its real business is carried on ... and the real business is carried on where the central management and control actually abides.”

Numerous jurisdictions are currently in the process of challenging and/or disputing the substance of foreign tax structures primarily, when they have evidence indicating that the operational management of the company is in fact carried out in a country other than the country of registration. Ensuring the preservation of Cyprus tax residency is of great significance for purposes pertaining both to a successful tax structure and efficient tax management.

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