A GUIDE TO CORPORATE RESIDENCE IN THE UK
This guide outlines the UK rules applicable when determining the residence of a company and provides some practical guidance for companies seeking to ensure that they remain resident outside the UK.

THE IMPORTANCE OF RESIDENCE

Broadly, a UK tax resident company is liable to UK corporation tax on its worldwide income and gains. A non-UK tax resident company is only liable to UK corporation tax if it is trading in the UK through a UK permanent establishment, such as a branch or agency. In such circumstances, the non-UK tax resident company would be liable to UK tax on the worldwide income and gains related to that permanent establishment.

A non-UK tax resident company that is not trading in the UK through a permanent establishment is liable to UK tax on some UK source income, including rental income. Most other UK income is taxable only to the extent that UK tax is withheld at source, e.g. on interest payments.

TEST FOR DETERMINING RESIDENCE

For UK tax purposes, a company’s tax residence status is determined according to three separate tests:

- The Place of Incorporation Rule;
- The Central Management and Control test; and
- The Treaty Override Rule.

The Place of Incorporation Rule

Subject to very limited exceptions, a company incorporated in the UK is automatically tax resident in the UK, unless it has to be treated as resident in another country under the tie-breaker provisions of a double tax treaty.

The Central Management and Control Test

A company that is not incorporated in the UK may still be tax resident in the UK if it is centrally managed and controlled in the UK. This concept has been developed by case law and involves considering the location where the top level of decision-making in a company takes place. Ordinarily, the place where a company is centrally managed and controlled will be the location where the final decisions that bind the company are made. Accordingly, a company cannot assert that it is tax resident outside the UK simply by virtue of being incorporated outside the UK.

"[WFW] COMBINES ‘FIRST-CLASS INDUSTRY KNOWLEDGE’ WITH ‘STRONG EXPERIENCE’ TO PROVIDE ‘GOOD VALUE FOR MONEY’.”

LEGAL 500 UK 2014
HM Revenue & Customs (HMRC) has published guidance on the concept of “central management and control”, which emphasises that a company’s place of central management and control is a question of fact and that no rigid guidelines can be followed.

The central management and control test is not concerned with the location of shareholders’ meetings; rather, the test focuses on where the highest level of control of the business of the company is conducted. Therefore, the constitution of the company should be considered in the first instance.

The constitution will normally give the directors authority to manage the company’s business. However, any fettering of the directors’ discretion in favour of the shareholders may suggest that the latter control the company and, therefore, that their location could dictate where the company is centrally managed and controlled. Indeed, if central management and control of a company is exercised outside board meetings by other parties, or at other times and places, the location of these events may also determine the tax residence of the company.

Additionally, the courts and HMRC have noted that the place where directors meet is only significant insofar as those meetings constitute the medium through which central management and control is exercised; i.e. the decisions taken at those meetings are made by people who can actually control the company. For example, if the highest level of control rests with a particular chairman or managing director and the board simply “rubber stamp” the decisions of that individual, the central management and control of the company will be the place where that individual usurps the position of the board and exercises control of the company.

Case law differentiates between situations where the decisions of the directors are usurped or dictated by a third party and, alternatively, where the directors retain central management and control irrespective of the fact that a third party may influence their decisions or may desire a certain outcome. Where a third party (such as a professional adviser) merely influences the directors without controlling the company, central management and control should remain the place where the directors exercise their control.

Directors can delegate administrative or other day-to-day tasks associated with running the business, without being deemed to have relinquished central management and control of the company. However, any delegated functions should be subject to adequate supervision and review by the company’s directors.

“[WFW] DELIVERS ‘EXTREMELY HIGH-QUALITY ADVICE’ ... G IVES ‘STRAIGHT ANSWERS’.”

LEGAL 500 UK 2012
The Treaty Override Rule

Where the tax residence of a company is determined by one of the two tests described above (under the incorporation rule or the central management and control test), the treaty override rule may operate to reverse the outcome of applying these tests.

Generally, where an otherwise UK tax resident company is regarded as resident in another jurisdiction under the domestic rules of that jurisdiction and there is a double tax treaty in force, the tiebreaker provisions in the relevant tax treaty should apply. Consequently, if the tiebreaker provisions treat the company as resident in the other jurisdiction and not in the UK (that is, it is not dual resident), then that company would be treated for UK tax purposes as resident outside the UK. Generally, tax treaties that follow an internationally accepted model contain tiebreaker provisions stating that a company that would otherwise be dual resident for the purposes of the treaty is deemed to be a resident only in the state in which its “place of effective management” is situated.

Broadly, the “place of effective management” is where key management and commercial decisions necessary for the conduct of a company’s business are made. An entity may have more than one place of management; however, it can only have one place of effective management at any one time.

PRACTICAL GUIDANCE TO ENSURE THAT A COMPANY REMAINS RESIDENT OUTSIDE THE UK

Below is a list of steps to be followed to ensure that a company (the “Company”) should remain resident outside the UK and in the “Offshore Jurisdiction”. If these guidelines are followed by the Company, the risk of being considered UK tax resident should be greatly reduced. However, it is important to note that residence remains a question of fact and, in each case, it will be necessary to show that central management and control is genuinely exercised outside the UK. The following guidelines are not exhaustive and other factors may be relevant.

Board Meetings

All of the Company’s board meetings should be held outside the UK and usually in the Offshore Jurisdiction. It would be preferable if the company’s articles of association prohibited board meetings from being held in the UK and prohibited directors voting whilst in the UK. Such a prohibition would enable the Company to demonstrate that it is not legally possible for it to be managed from the UK. If this is not practicable, special care should be taken to show that participants from the UK do not dominate the decision making process.

Holding physical board meetings in a specific place in the Offshore Jurisdiction would provide useful evidence to demonstrate that central management and control is exercised in the Offshore Jurisdiction, rather than fluctuating between various locations outside the UK. It is easier to demonstrate that central management and control is not conducted in the UK if there is a clearly identifiable place outside the UK where management is conducted.

Board meetings should be held at regular intervals (at least on a quarterly basis) in the Offshore Jurisdiction, so that relevant matters may be discussed and decisions made in an informed and timely manner. To demonstrate that central management and control is exercised by the directors in board meetings, the Company’s constitutional processes should be followed; otherwise it could be maintained that, in practice, the board of directors are being “usurped” and that the Company is actually being managed and controlled by an “outsider” (e.g. a UK adviser).

Full and accurate board minutes should be prepared for all of the Company’s board meetings. In addition, an agenda and documentation for the meeting should be circulated sufficiently far in advance of the meeting to allow the directors the opportunity to consider them and make informed decisions. Given that the burden of proof that the Company is centrally managed and controlled in the Offshore Jurisdiction, is likely to rest on the Company (not HMRC, the board minutes and board papers will provide important evidence that the directors were provided with full information and that they carefully considered such information, before making any decisions relating to the policy and management of the Company.

For evidential purposes, in addition to retaining formal board minutes and accompanying documentation prepared for major decisions, any ancillary documents such as director’s diaries,
hotel bills and airline tickets should also be retained.

**Decision Making**

The Company's directors should make all decisions affecting the policy and management of the Company's business at board meetings held in the Offshore Jurisdiction. Such decisions should include matters relating to:

- financing the business;
- investment policy;
- business strategy;
- production;
- marketing;
- expansion of the company's business (geographically or into new products or services);
- employing or appointing executives, directors, managers, auditors and professional advisers; and
- any material contracts to be entered into by the Company.

All decisions made by the board should be informed decisions. The Company's directors must have sufficient information to make an informed decision. The directors should be encouraged to ask for information and seek advice about the decisions being made. All information should be provided to the board in a timely manner, to ensure that the directors have sufficient time to reach an informed decision. It should not be assumed that it is obvious that an envisaged transaction is commercially in the best interests of the Company and that the board should therefore have no hesitation in approving the transaction. The board must be seen to have come to its decisions after being duly informed and after having given due consideration to the matter. The board of directors must not be seen to merely follow and implement instructions from persons resident in the UK.

An effective decision is made at a meeting after sufficient discussion. The board of the Company should meet, discuss the relevant matter and minute the discussion. Passing resolutions around for signature would not suffice.

Where board resolutions are passed in writing they should be signed in the Offshore Jurisdiction and not in the UK. Any part of management which is the responsibility of the board of directors must not be carried out by an individual director or anyone else unless approved by the directors at a board meeting. This is important to show that the correct constitutional organ is not being usurped or sidestepped.

**Directors**

The majority of the board of directors and the majority of those directors attending board meetings should be resident in the Offshore Jurisdiction and definitely outside the UK. Ideally, there should be no quorum unless there is a majority of directors resident in the Offshore Jurisdiction. Such directors should include those with senior managerial roles and persons capable of making a significant contribution to the business of the Company. HMRC has been known to call as witnesses the directors of companies claiming to be resident offshore and to cross-examine them to determine whether they have sufficient understanding of the business to be able to take effective decisions.

UK resident individuals can be directors of the Company, provided they are in a minority. Ideally, no UK resident director should participate in board meetings via telephone or video facility while physically present in the UK. If this occurs, particular care should be taken to ensure that the UK participant does not dominate or lead the meeting and that decisions are effectively taken by a majority of directors who are outside the UK. No part of management should be carried out in the UK (or in any other jurisdiction where doing so could cause any tax or other legal consequences for the Company).

If the chairman of the board of directors has a casting vote, he/she should not be resident in the UK.
Consideration should be given to using alternate directors, particularly where the board of directors includes UK resident individuals. When a UK resident director cannot attend a board meeting in the Offshore Jurisdiction, the physical attendance at the meeting of an alternate strengthens the position that the meeting in the Offshore Jurisdiction was indeed where the board decisions were made. Ideally, the appointment of UK resident alternate directors should be avoided.

Directors should not be permitted to give instructions to third parties from within the UK.

**Professional Advisers**

The Company can engage the services of UK resident professional advisers. The professional advisers can propose, advise and influence the Company but cannot dictate management decisions.

The Company should appoint any professional advisers directly and there should be an engagement letter signed by the directors of the Company and the relevant advisers. Professional advisers must always ask the directors whether they are willing to accept the terms in a document and if so to sign a particular document, rather than sending a letter asking the directors to “sign a document where indicated”. All communications and documents should be worded in the way one would expect for a company that is truly managed and controlled by its directors. Such documents will provide important evidence if the residence or place of business of the Company is challenged. Documents that contain language that is suggestive of “rubber stamping” or formulaic dealings will be used to support a challenge that the Company is not resident in the Offshore Jurisdiction and will result in there being less evidence to support the Company’s position in any such disputes. For example, board minutes should not be drafted in advance of a meeting, particularly by advisers or other people in the UK.

**Administrative Issues**

The Company’s books of account and corporate records (including minute books) and other statutory documents should be kept in the Offshore Jurisdiction.

The Company’s postal address should be in the Offshore Jurisdiction.

The Company should ensure that it complies with any tax requirements of the tax authority of the Offshore Jurisdiction and, if possible, obtains a certificate of tax residence from that tax authority.

At all times, the Company’s secretary should be resident outside the UK.

If the Company receives administrative and other such services from a third party specialising in providing such services, those services should be provided outside the UK.

It is advisable that the Company’s bank accounts are maintained in the Offshore Jurisdiction and outside the UK.

**Shareholders’ Meetings**

It is preferable that shareholders’ meetings are held in the Offshore Jurisdiction.
<table>
<thead>
<tr>
<th>Location</th>
<th>Address</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athens</td>
<td>6th Floor, Building B 348 Syngrou Avenue Kallitheia 176-74, Athens</td>
<td>+30 210 455 7300</td>
</tr>
<tr>
<td>Bangkok</td>
<td>Unit 902, 9th Floor GPF Witthayu Tower B 93/1 Wireless Road Patumwan, Bangkok 10330</td>
<td>+66 2665 7800</td>
</tr>
<tr>
<td>Dubai</td>
<td>Office 1503, Level 15, Tower 2 Al Fattan Currency House PO Box 506896 Dubai</td>
<td>+971 4 278 2300</td>
</tr>
<tr>
<td>Frankfurt</td>
<td>Ulmenstraße 37-39 60325 Frankfurt am Main</td>
<td>+49 69 297 291 0</td>
</tr>
<tr>
<td>Hamburg</td>
<td>Jungfernstieg 51 20354 Hamburg</td>
<td>+49 40 800 084 0</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Units 1703-1707, One Pacific Place 88 Queensway, Hong Kong</td>
<td>+852 2168 6700</td>
</tr>
<tr>
<td>London</td>
<td>15 Appold Street London EC2A 2HB</td>
<td>+44 20 7814 8000</td>
</tr>
<tr>
<td>Madrid</td>
<td>C/ Maria de Molina, 4 28006 Madrid</td>
<td>+34 91 515 6300</td>
</tr>
<tr>
<td>Milan</td>
<td>Piazza del Carmine 4 20121 Milan</td>
<td>+39 02 721 7071</td>
</tr>
<tr>
<td>Munich</td>
<td>Gewürzmühlstraße 11 – Courtyard 80538 Munich</td>
<td>+49 89 237 086 0</td>
</tr>
<tr>
<td>New York</td>
<td>1133 Avenue of the Americas New York, New York 10036</td>
<td>+1 212 922 2200</td>
</tr>
<tr>
<td>Paris</td>
<td>26 avenue des Champs-Élysées 75008 Paris</td>
<td>+33 1 56 88 21 21</td>
</tr>
<tr>
<td>Rome</td>
<td>Piazza Navona 49 00186 Rome</td>
<td>+39 06 684 0581</td>
</tr>
<tr>
<td>Singapore</td>
<td>6 Battery Road #28-00 Singapore 049909</td>
<td>+65 6532 5335</td>
</tr>
</tbody>
</table>