Ireland - Information on residency for tax purposes

Section I – Criteria for Individuals to be considered a tax resident

Residence

An individual’s Irish tax residence is determined by the number of days he or she is present in the State during a tax year. An individual is present for a 'day' for residence purposes if he or she is present in the State at any time during a day. For 2008 and previous years an individual was only deemed present in the State for a day if he or she was present in the State at the end of the day i.e. midnight.

An individual is resident in the State where he/she is present in the State:

- for 183 days or more in a tax year, or
- for 280 days or more in total in the tax year and the preceding tax year (“look back test”).

The 280 day test only comes into play where an individual is present in the State in a tax year for less than 183 days. If the individual is present in the State for periods of 30 days or less in a tax year such days are ignored in determining residence.

An individual who is not tax resident for a tax year on the basis of days spent in the State can elect to be tax resident in certain circumstances.

Domestic Legal Provision: Taxes Consolidation Act 1997, Part 34 Provisions Relating to the Residence of Individuals

Section II – Criteria for Entities to be considered a tax resident

Guidance

Residence is a material factor for companies in determining tax liability and for the purpose of applying many provisions of tax legislation. A company resident in the State is liable to corporation tax on its worldwide profits, not just its Irish source profits. A company not resident in the State is not within the charge to corporation tax unless it carries on a trade in the State through a branch or agency.

Position up to 1999

Prior to the introduction of statutory provisions, company residence was determined with regard to the long established common law rules based on central management and control. Broadly speaking, the management and control test considers the highest level of control including such matters as the formulation of company policy, major investment decisions, negotiation of major contracts and acquisitions or disposals of businesses rather than normal day to day business transactions. The common law rules applied to both Irish incorporated and foreign incorporated companies.

Finance Act 1999 Changes

The common law rules were supplemented by statutory anti-abuse provisions in section 23A of the Taxes Consolidation Act 1997 (TCA), (inserted by Finance Act 1999). This section provided that in certain specific circumstances a company would, by virtue of being incorporated in the State, be regarded as resident in the State for tax purposes. Broadly, section 23A provided that where a company is incorporated in Ireland and neither it, nor any company related to it, carries on a trade in Ireland, the company would be regarded as resident in the State for tax purposes, unless it would be treated as not being so resident for the purposes of a double taxation treaty.

This specific incorporation rule did not apply where the company is a 'relevant company' that carries on a trade in the State or is related to a company that carries on a trade in the State. A 'relevant company' is a company that either:

- is ultimately controlled by persons resident in the EU (including Ireland) or in a country with which Ireland has concluded a double taxation treaty, or
- is, or is related to, a company the principal class of the shares of which is substantially and regularly traded on one, or more than one, recognised stock exchange in an EU Member State or in a tax treaty country.

Section 23A provided that a company which is regarded, for the purposes of a tax treaty, as resident in a territory other than the State and not resident in the State, was to be treated as not resident in the State for tax purposes. This provision takes account of the "tie-breaker" clause in most tax treaties whereby, in situations where a company is resident in both Contracting States under their respective laws, the residence of the company is to be treated as situated in the State where its "place of effective management" is located. According to the Commentary on the OECD Model Treaty, the place of a company's effective management is the place where key management and commercial decisions necessary for the conduct of its business are in substance made.

Finance Act 2013 Changes

TCA, section 23A was amended by Finance Act 2013 to provide that where by reason of a mismatch of residence rules with a treaty-partner country, an Irish-incorporated company would neither be resident in that country nor in in the State and, accordingly, would not otherwise be resident in any country, the company would be treated as resident in the State. This change addressed a mismatch situation where an Irish-incorporated company that is managed and controlled in a treaty-partner country is not regarded as resident for tax purposes in any territory because-

(i) the company would not be resident for tax purposes in the treaty-partner country, because it is not incorporated in that country, and

(ii) the company would not be resident in the State for tax purposes because it is not managed and controlled in the State.

This change ensured that an Irish incorporated company could not be 'stateless' in terms of its place of tax residence, as a result of a mismatch between Ireland's company residence rules and those of a treaty partner country.

Finance Act 2014 Changes

The company residence rules in TCA, S23A were fundamentally revised in Finance Act 2014. Section 43 of Finance Act 2014 substituted a new section for section 23A to provide that an Irish incorporated company will be regarded as resident for tax purposes in the State. Section 43 also provides for continuation of the alignment of company residence with the treatment of company residence in double taxation treaties. Where a company is regarded as resident in a territory other than the State and not resident in the State for the purposes of a tax treaty, the company shall be regarded as not resident in the State for tax purposes under domestic law.

The new incorporation rule for determining the tax residence of a company incorporated in the State will apply to companies incorporated on or after 1 January 2015. For companies incorporated in the State before this date, a transition period will apply until 31 December 2020 and section 23A as it was before the 2014 Finance Act amendment will continue to apply during the transition period except in circumstances where there is both a change in ownership and a major change in the nature and conduct of the business of the company.

The changes to the tax residence rules made by Finance Act 2014 do not prevent a foreign incorporated company that is centrally managed and controlled in the State being resident in the State for tax purposes. For such companies, the common law rule of company residence based upon central management and control continues to apply. Accordingly, a company that is incorporated in a foreign jurisdiction but that is centrally managed and controlled in the State will continue to be treated as resident in the State for tax purposes.

Domestic Legal Provision: Taxes Consolidation Act 1997, Section 23A: Company Residence

Section III – Entity types that are as a rule not considered tax residents

A comprehensive list of entities is not available at this time and clarification can be sought from the Irish Competent Authority. The contact details for the Competent Authority are listed below in Section IV.

Section IV – Contact point for further information

The issue of residency spans a number of corporate units within the Revenue Commissioners. If an individual or entity is uncertain as to their residence status, they should contact the Irish Competent Authority and their enquiry will be directed to the appropriate division. Contact details for the Irish Competent Authority are as follows:

International Tax Division
Revenue Commissioners
New Stamping Building
Dublin Castle
Dublin 2
Ireland