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Our ref

Dear Liz

Company Registrations Online (CRO)

Can I please start, by offering my apologies for the time taken in responding to the issues you have raised through recent correspondence.

As you are aware, considerable technical involvement has been necessary including seeking advice from our Central Technical Unit.

It would appear from discussions with Angela Cox, that there are two main issues to which you require specific guidance. They are:-

- An official statement explaining the requirements in order that your clients may apply to be considered for Treaty Non-resident status.
- Whether companies should lodge trading accounts at Companies House, if they are trading overseas and not in the UK.

Below is a summary of the guidance covering the legislation governing the handling of Foreign Companies, incorporating in the UK, and it's practical application;

A company's residence status usually determines where it pays tax, S66 FA 1988 stated that a company that is incorporated in the UK is resident here under domestic law. Under Article 4(1) of a typical Double Taxation Agreement (DTA) a company will be a resident of the UK if, under the laws of the UK, it is liable to tax in the UK by reason of it's domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. If the company is treated as resident in the UK, it would pay tax here on its' profits wherever those profits arise, be that in the UK or outside the UK. The UK has Double Taxation Agreements with most countries. The main purpose of a Double Taxation Agreement is to provide relief from having to pay the tax in both countries, on the same income. Although a company that is incorporated here in the UK, is resident here under domestic law, it should not be overlooked

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that it could also be treated as resident in another State, under that State's domestic law. Such a company would then be dually resident, and we would need to determine who has the taxation rights. This is determined, first of all, by looking to see if there is a Double Taxation Agreement between the UK and the other state, and if it contains a tie breaker test. A tie breaker test typically states that a company that is a resident of both States under their respective laws shall, for the purpose of the Double Taxation Agreement between them, be deemed to be a resident only of that state in which its' effective management is situated. Consequently it would be wrong for us to certify the residence status of a UK incorporated company, if the effective management and control is elsewhere and if the certificate is likely to be used to support a claim for relief from another State's tax if that relief is not due. Any claim under Section 249 FA94, that the company is treaty non resident, and therefore exempt from UK tax on its' profits, must be supported by an original certificate of residence from a foreign tax authority.

A claim under Section 249 FA1994 must be supported by the following documents:

- An original Certificate of Residence
- Written assurance signed by the company directors, that the company does not carry out any trading activities in the UK and that the company has not acquired any sources of income or gains chargeable to UK tax.

Basically we try to establish who the Ultimate Beneficial Shareholder is, and where they are resident, because we might have a DTA with the State in which the UBS is resident. The DTA might have a tie breaker clause, and if the UBS is the person "calling the shots" or is in a position to do so, the effective management and control of the company might be where the UBS is resident.

A company treated as resident in the UK, by virtue of the application of the legislation contained within S66 FA1988, is chargeable to tax on all its' profits:

- Wherever the profits arise
And
- Whether or not the profits are received in or transported to the UK

A UK resident company has obligations to both HMRC and to the Registrar of Companies.

My understanding of the Companies Act is that all companies are required to send an annual return to the Registrar of Companies every year. This is not a requirement of HMRC but of the Registrar of Companies. Under the Companies Act, all limited Companies whether trading or not must keep accounting records and file annual accounts with the registrar.

Private limited companies must do this within ¹⁰₉ months of the balance sheet.

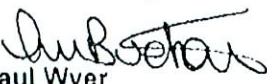
All company accounts should contain - a balance sheet
a profit and loss account
notes to the accounts containing statutory disclosures
if not exempt, an auditors report
a directors report

Failure to do this might lead to the Registrar of Companies striking off the company from the Register of Companies.

Further guidance on the legislative requirements, contained within the Companies Act should be directed through Companies House.

I have no objection to you using the statement you have submitted for consideration, and I have made some minor adjustments to it.

Yours sincerely



PP Paul Wyer
Specialist Teams Manager

UK Limited Companies

Treaty Non-Resident Status & Filing of Accounts at Companies House

If your company or a subsidiary/branch of the company is not trading in the United Kingdom, but is trading anywhere in the world, the company is not dormant and **must file trading accounts at Companies House**. Also, as your company is in fact a United Kingdom incorporated company, it is liable by incorporation to UK Corporation Tax unless you can prove that it is not resident in the United Kingdom.

Any claim under Section 249 Finance Act 1994 that your company is treaty non-resident, should be supported by the following;

- An original Certificate of Residence / **Bostedbekræftelse**, from the appropriate fiscal authorities. Please note that the certificate must certify residency, under the terms of the Double Taxation Treaty with the United Kingdom. We require an original certificate, not a photocopy. Please also note that a letter which simply states your tax reference is not sufficient.
- Written assurances signed by the company directors, that the company does not carry out any trading activities in the United Kingdom and that the company has not acquired any sources of income or gains chargeable to UK tax.
- A copy of the accounts, when they become available.
- A copy of the Memorandum and Articles of Association of the company.
- The full name and trading address of any subsidiaries or branches.

Please note that Certificates of Residence are often valid for one year only and a fresh certificate may be required each year. In any case the certificate should state clearly the period to which it relates.

In addition the relevant Revenue Authorities require the following information, which will assist them in making an informed decision regarding your company's residence status.

- Does the company maintain any interest in the UK, for example property etc?
- The full name and residential address of the ultimate beneficial owner of the company.
- The place or location (full address needed) from where the company is managed and controlled in terms of the double taxation agreement between the United Kingdom.
- If the ultimate beneficial owner does not manage and control the company, who does? In this case again a full name and address is needed.
- What connection does that individual have with the ultimate beneficial owner?
- What activities does the company undertake or intend to undertake?
- Where will these activities be undertaken?

If this information is not submitted then your company may be required to file a corporation tax return as normal and may be liable to UK tax on its world-wide income. It may also be necessary to raise determinations in the absence of any accounts or returns.
