

## **Chapter 1: Company residence**

### ***Overview***

1. This Chapter gives the statutory rules for company residence outside double taxation conventions.
2. The rules on company residence are both statutory and non-statutory. The oldest of the company residence rules (“central management and control”) is based on case law.
3. The central management and control test is generally considered to be best expressed in De Beers Consolidated Mines v Howe (1905), 5 TC 198 HC “A company resides, for the purposes of Income Tax, where its real business is carried on...I regard that as the true rule; and the real business is carried on where the central management and control actually abides”. This has been endorsed by subsequent decisions and was described by Lord Radcliffe in Bullock v Unit Construction Company (1959), 38 TC 712 HL as being “as precise and unequivocal as a positive statutory injunction”.
4. Residence may also be determined by the tie-breaker in a double taxation convention. When a company is resident in the territory of both parties any tie-breaker will generally award residence to the country where the effective management of the company is situated.
5. The two main statutory rules are found in section 66 of FA 1988 and section 249 of FA 1994. These two tests are rewritten in this Chapter.
6. Under section 66 of FA 1988 a company incorporated in the United Kingdom is, with some exceptions, regarded as resident here for all tax purposes. This overrides the rule in case law given above, although the case law test continues for companies outside section 66, that is to say companies which are not incorporated in the United Kingdom.
7. Section 249 of FA 1994 treats a company which is resident in the United Kingdom under the case law test or section 66 of FA 1998 as being not-resident in the United Kingdom when the company is resident in the United Kingdom under UK law and resident in a territory outside the United Kingdom under a foreign law in such a way that the tie-breaker in the double taxation treaty between the United Kingdom and that other territory would make the company resident outside the United Kingdom.
8. Both these statutory rules apply for the purposes of the Taxes Acts as defined in section 118 of TMA (see section 66(1) and 66A(2) of FA 1988 and section 249(1) of FA 1994). This Bill rewrites the rules for the purposes of the Corporation Tax Acts only. Because the Corporation Tax Acts are defined more narrowly (Schedule 1 to the Interpretation Act 1978) than the Taxes Acts, Schedule 1 to this Bill introduces new

sections into TMA, TCGA and the Income Tax Act 2007 to apply the rules given in this Chapter to those Acts.

**Clause 1: Companies incorporated in the United Kingdom**

9. This clause provides that a company incorporated in the United Kingdom is resident there for corporation tax purposes. This clause is based on section 66(1) of FA 1988.

10. *Subsection (2)* makes it clear that a company which is treated as resident in the United Kingdom under subsection (1) is also treated as not resident in any other territory.

**Clause 2: Companies not incorporated in the United Kingdom**

11. This clause gives rules regarding residence for companies which are not incorporated in the United Kingdom. Companies which were treated as UK resident immediately before they ceased trading or came under the control of a foreign liquidator continue to be treated as UK resident. This clause is based on section 66(2) of FA 1988.

12. This clause clarifies that the provision applies only to companies which are not incorporated in the United Kingdom. That is less clear in the original. Any UK incorporated company which ceases trading or is being wound up outside the United Kingdom is already treated as UK resident under the rule in the previous clause.

13. The purpose of the rule in this clause is to provide that a company which is resident in the United Kingdom through central management and control (see above) remains resident here. Such a company could otherwise become non-resident if central management and control left the United Kingdom.

14. Section 66(4) of FA 1988 gives effect to Schedule 7 to FA 1998, the commencement and transitional provisions. Paragraphs of this Schedule that are not spent have been rewritten in Schedule 2 (transitionals and savings etc.) to this Bill.

**Clause 3: SEs which transfer their registered office to the United Kingdom**

15. This clause provides that once an SE has transferred its registered office to the United Kingdom it becomes and remains resident here, notwithstanding its residence elsewhere under overseas law or the subsequent transfer of its office abroad. This clause is based on section 66A of FA 1988.

16. This section applies only to SEs which transfer their registered office to the United Kingdom since SEs that are formed here will be resident in the United Kingdom in any event under clause 1.

17. Once the registered office is moved to the United Kingdom the SE is effectively treated as if it were incorporated here. It cannot cease to be resident at any time simply by transferring its registered office.

18. The proposed definition of “SE” for this Bill is “a European public limited-liability company (or Societas Europaea) within the meaning of Council Regulation (EC) No 2157/2001 on the Statute for a European company”.

**Clause 4: Companies treated as non-UK resident under double taxation arrangements**

19. This clause treats a company which is resident in the United Kingdom, but treated under a double taxation convention as resident in a territory outside the United Kingdom, as resident outside the United Kingdom for corporation tax purposes. This clause is based on section 249 of FA 1994.

20. Section 250 of FA 1994 is spent. It is repealed by this Bill.

## **Schedule 2: Transitionals and savings etc.**

### **Part 1: General provisions – continuity of the law**

1. These paragraphs ensure continuity of the law, despite the fact that this Act repeals and rewrites provisions.
2. Paragraph 2 makes clear that the proposition about the continuity of the law in paragraph 1 does not apply to changes in the law made by this Act.
3. The paragraphs in this Part stand instead of section 17(2) of the Interpretation Act 1978 and provide a comprehensive set of transitional arrangements.

### **Part 2: Changes in the law**

4. This paragraph allows anyone affected by a minor change in the law made by this Act to elect that the change does not apply to events occurring before 1 April 2009. This allows the Act to be applied as soon as possible without imposing charges retrospectively.

### **Part 3:**

#### ***Paragraphs 1 to 3: Company residence: exceptions to section 1***

5. These paragraphs apply where a company incorporated in the United Kingdom carried on business before 15 March 1988, the commencement date for section 66 of FA 1988 (rewritten in Chapter 1 of Part 1). These paragraphs rewrite parts of paragraphs 1, 2 and 5 of Schedule 7 to FA 1988. Paragraphs 4 and 5 of that Schedule are spent.
6. UK incorporated companies which received Treasury consent to migrate from the United Kingdom before the commencement date (paragraph 1) and those with an application in the pipeline before the commencement date (paragraph 2) retain their foreign residence (despite clause 1) until they cease to carry on business or become resident in the United Kingdom under other rules. The provision for the Treasury to consent to company migrations (most recently section 765 of ICTA) was repealed with effect from the commencement date for section 66 of FA 1988.