

ADVISORY  
Industry Information

# COVID-19 – Irish Corporate Tax Residence Considerations

25 Mar 2020

To date, the COVID-19 pandemic has resulted in high levels of disruption for companies conducting business in Ireland. Guidance issued by the Irish Revenue on 23 March 2020 should help to alleviate corporate tax residence concerns associated with COVID-19 related travel restrictions.

## Background

Directors of Irish resident companies who routinely travel to Ireland to attend board meetings may find they are unable to travel due to disruptions to airline schedules, lock-downs and self-isolation restrictions. As a result, Irish resident companies may be required to facilitate attendance at board meetings via electronic means from outside of Ireland (provided this is permissible under the company's constitutional documents). Where the directors of an Irish resident company participate in board meetings electronically from outside of Ireland, consideration must be given to ensuring that this does not prejudice Irish tax residence.

## Irish Corporate Tax Residence

Companies which are incorporated in Ireland on or after 1 January 2015 are automatically regarded as Irish tax resident unless treated under the terms of a double tax treaty with Ireland as resident in a treaty jurisdiction and not in Ireland<sup>1</sup>. This treaty exception should generally only arise where, for example, the central management and control of the company is located in a tax treaty country and not in Ireland. Most tax treaties include a "tie-breaker" clause for dual resident companies whereby the residence of a company is to be treated as situated where its "place of effective management" is located. In these circumstances the mutual agreement of the Irish Revenue and the relevant foreign tax authority may be required in making such a determination.

The concept of central management and control is directed at the highest level of control of a company and is a fact based test as to where the central management and control of the company resides. As the central management and control of a company is in most cases exercised through the medium of directors' meetings, the place where the directors hold their meetings during which they make strategic and policy decisions in relation to the company is usually indicative of where central management and control resides. As with central management and control, the place of effective management is a facts and circumstances test and is generally regarded as being located where key management and commercial decisions in relation to the business of a company are made.

As a matter of practice, a company wishing to establish itself as resident for tax purposes in Ireland will generally ensure that its central management and control and its place of effective management is located in Ireland by ensuring that all decisions affecting matters of policy, strategy and overall management of the company's affairs are taken at meetings of the board of directors in Ireland. Accordingly, directors of Irish resident companies are typically required where possible to attend board meetings in person in Ireland in order to ensure that the company remains Irish tax resident.

<sup>1</sup> Companies incorporated before 1 January 2015 are generally regarded as resident for tax purposes in Ireland if their central management and control is in Ireland (subject to certain conditions). From 1 January 2021 the incorporation test set out above will apply to such companies.



## COVID-19 and Irish Revenue Guidance

The inability of directors to physically attend board meetings in Ireland and the holding of board meetings via electronic means as a result of COVID-19 travel restrictions may pose a risk that the place of effective management of an Irish resident company is deemed to be in a jurisdiction other than Ireland.

Helpfully, however, the Irish Revenue have released guidance to alleviate this risk – [eBrief No. 46/20: Advice and information to assist taxpayers and their agents during the COVID-19 pandemic](#). The eBrief confirms that if an individual is present in another jurisdiction as a result of COVID-19 related travel restrictions, and would otherwise have been present in Ireland, the Irish Revenue will be prepared to disregard such presence outside Ireland for corporation tax purposes for a company in relation to which the individual is an employee, director, service provider or agent.

In addition, where an individual is present in Ireland and that presence is shown to result from COVID-19 related travel restrictions, the Irish Revenue will be prepared to disregard such presence in Ireland for corporation tax purposes for a company in relation to which the individual is an employee, director, service provider or agent. This additional confirmation alleviates the risk for non-Irish resident companies of creating a taxable presence in Ireland through the presence of employees, directors, services providers or agents in Ireland as a result of such restrictions.

The eBrief states that the individual and the company should maintain a record of the facts and circumstances of the *bona fide* relevant presence in or outside Ireland as evidence that such presence resulted from COVID-19 related travel restrictions. Accordingly, it will be important to ensure that a written record detailing the circumstances regarding the inability of an individual to travel to, or from, Ireland is maintained as this may be requested by the Irish Revenue.

While the Irish Revenue guidance is a welcome measure, tax residence rules can be complex and the mutual agreement of the Irish and foreign tax authorities may still be required to determine the “place of effective management” of, and taxing rights over, a company. Companies should therefore continue to monitor local developments in jurisdictions in which directors, employees and agents are located. We would hope that other jurisdictions will follow Ireland in taking a pragmatic approach regarding corporation tax and corporate tax residence in order to provide some certainty to companies in these uncertain times.

We are monitoring developments in this area. For further information or if you have any queries on this topic, please contact a member of the Walkers Tax team or your usual Walkers contact.

## Contacts

Please contact the authors, below, or one of your other usual Walkers contacts if you would like further advice or information on this topic.



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