



## LT In Focus

# New rules for issuing the tax residency certificates for companies in Cyprus

The Republic of Cyprus has introduced new rules for issuing the tax residency certificates (TRC) that confirm permanent residency for Cypriot companies. In our issue below, we provide detailed comments on the key changes and propositions.

On 30 October 2015, the Cypriot tax authorities released Circular No. 2015/19, which permits a TRC to be granted to companies based on a special questionnaire filled in by the directors when applying for the TRC ([please see the questionnaire template attached](#)). Previously, a company incorporated in Cyprus could obtain such a certificate by default (provided it had no taxes overdue): in practice, the Cypriot tax authorities would rely on a representation from the company's directors confirming that the company is a tax resident of Cyprus.

The new questionnaire focuses heavily on the place of actual management and control over Cypriot companies.

The TRC is required to enjoy the provisions of double tax treaties (e.g. beneficial taxation of passive income repatriated from Russia) as well as to mitigate the risk of Cypriot companies being recognized as tax residents of other jurisdictions, including Russia.

### Questionnaire content

In addition to the basic information about the company and the requested TRC, the questionnaire asks for details including:

- **Incorporation and tax residence of the company.** Is the company incorporated in the Republic of Cyprus and is it a tax resident in Cyprus only?
- **Board of directors.** Is Cyprus the place where the majority of board meetings take place, and is Cyprus the country of tax residency of the majority of the board members? Does the board of directors exercise control and make key management and commercial decisions?
- **Shareholder meetings.** Do the shareholder meetings take place in Cyprus?
- **General powers of attorney.** Has the company issued any general powers of attorney?
- **Maintenance of books and records.** Is Cyprus the place where the books and records are prepared and kept (including the board of directors' minutes, statutory books and reports), and is it the place where the company's seals are stored? Are corporate filing and reporting performed by company representatives located in Cyprus? Is Cyprus the place where agreements related to the company's business and assets are signed or executed?
- **Tax payments and filing.** Have all the tax returns (T.D.4/I.R.4) and the self-assessments for the tax years that are due been paid?

Persons filling in the questionnaire (directors) acknowledge their understanding that making incorrect or false declarations is a criminal offense.

### Use of the information by tax authorities

According to the Law of the Republic of Cyprus "On Income Tax", a company is considered to be a tax resident in Cyprus if it is managed and controlled in Cyprus. There is no definition of the term "managed and controlled" in the effective Cypriot legislation. In practice, the tax authorities would consider the company to be managed and controlled in Cyprus if all the strategic decisions concerning the company were made in Cyprus and at least the majority of its directors reside in Cyprus, or the board meetings of the company were held in Cyprus.

As of today, there are no official guidelines with respect as to how the responses to the questionnaire will be used by the tax authorities to make the decision as to whether or not to issue a TRC.

However, based on unofficial information from the Cypriot tax authorities, we have been able to deduce the following:

- The tax authorities will pay particular attention to questions relating to whether the majority of the board of directors are Cypriot tax residents and whether the board meetings are held in Cyprus. This is in line with the key indicators that the tax authorities have historically considered evidence that the management and control of a company takes place in Cyprus. In this context, just as in the past, the practice of directors joining meetings from abroad via telephone/teleconferencing should be avoided.
- If the majority of board meetings are held in Cyprus and there are some (though not necessarily a majority of) directors who are tax residents of Cyprus, we understand that the company may be considered a tax resident in Cyprus and may be issued with the TRC. In this case, the more of the other questions that can be answered positively (except for the question about powers of attorney) the better in terms of securing residency and the issuance of a TRC.

We also understand that there are three critical points relating to confirming the permanent location of a Cypriot company:

- If there are no Cypriot tax resident directors on the board of directors (the latest Board of Directors Certificate would need to be attached to the questionnaire), then the tax authorities may well refuse to issue a TRC. Thus, assuming it is acceptable to a client from a business perspective, having no Cypriot tax resident directors should be avoided. We appreciate that while ideally the majority of the directors should be Cypriot tax residents, in certain cases, clients may not want a majority of Cypriot tax resident directors, which would mean they would have to answer the relevant question in the questionnaire negatively. In such cases, clients should ensure that at least one of the directors is a Cyprus tax resident and maintain sufficient evidence that the board meetings have taken place in Cyprus.
- If a general power of attorney has been issued to a non-resident, it may also influence the tax authorities' decision not to issue a TRC. We have advised against the issuance of such general powers of attorney in the past. Our usual advice is for a particular decision to be taken by the directors at a board meeting in Cyprus and recorded as such, with a specific power of attorney to be granted for the purposes of implementing the particular decision that was resolved at the board meeting in Cyprus. The inclusion of such a question in the questionnaire confirms our understanding that the tax authorities would treat the existence of a general power of attorney granted to a non-resident as a strong indicator that the company may not be a tax resident of Cyprus. Thus, if a company has such general powers of attorney in place, these should be revoked.
- If the company is not up to date with its tax filings and tax payments, the tax authorities will not issue a TRC. This may not affect the Cypriot tax residency status as such, however it will not be possible to obtain a TRC for submission to a foreign tax authority (for example to claim tax treaty protection). Considering this, before requesting a TRC, a company should ensure that all due tax returns and payments have been submitted to the tax authorities.

With respect to other aspects of the questionnaire, while again emphasizing that there is no official guidance at present, we would like to note the following:

- As we have advised clients in the past, the board of directors should be in a position to exercise real decision-making powers and not simply act on instructions, e.g. from Russia. This can be evidenced by making sure the directors have all the information they would reasonably require to make a decision as well as directors being adequately qualified and experienced to make the decision. This appears to be the logic behind including this question in the questionnaire, and we believe the Cypriot tax authorities will primarily rely on representation from the directors when considering this point. However, it is important that such representation be supported through the client's corporate governance procedures and their documentation, particularly in cases where there is a high risk of challenge by a foreign tax jurisdiction. This would be of particular significance in case of requests for exchange of information where in recent practice we have seen questions raised to determine whether or not directors are of a nominal nature.
- As the keeping of records and preparation of other documents (e.g. minutes of the board of directors' meetings) in Cyprus, as well as keeping corporate seals in Cyprus, should not be particularly burdensome for a client, we would expect most clients should be able to respond positively to the relevant questions. It would also be expected that the question regarding corporate filing and reporting functions should be responded to positively by virtue of the functions of the company secretary in Cyprus.
- With respect to the question regarding whether the shareholders' meetings take place in Cyprus, where practically possible, it is recommended that such meetings do take place in Cyprus. This could be achieved by appointing a representative to participate in shareholder meetings in Cyprus.

In cases where this may create practical problems, at the very least, the annual general meeting should be held in Cyprus.

- It is not clear how much weight will be placed on the response to the question regarding the execution of agreements in Cyprus or whether all or only some agreements need to be executed in Cyprus in order to be able to respond positively to this question. The matter of where to execute contracts may need to be considered by clients on a case-by-case basis depending on the significance of the agreement and on whether the subject matter of the agreement is such that it may be subject to Cypriot stamp duty if executed in Cyprus. For the purposes of responding to the questionnaire, the position could be taken that if the significant agreements are executed in Cyprus, then a positive reply can be provided to this question.

As in all such new situations, where there is no official guidance, any assessment of what criteria will be used to acknowledge the company as a tax resident of Cyprus is subjective and must be considered separately in each specific case by finding a balance for each company based on the nature of its business.

Based on our current understanding of the situation, most companies claiming Cypriot tax residency should already be in a position to respond in a positive manner to many of the questions on the questionnaire.

Where this is not the case for particular questions, and there is an obvious arrangement in place which may be detrimental to the request for a TRC (e.g. the granting of a general power of attorney, board meetings being held outside of Cyprus), then action should be taken to rectify this.

The above comments are made on the basis of our initial assessment of the impact of the questionnaire. The practice of the Cypriot tax authorities over the coming months should provide us with a better indication of the process they will follow when reviewing the responses to the questionnaire.

**On 9 February 2016 Deloitte CIS, Moscow office is holding a business breakfast on legislative developments in Cyprus and Russia in the context of the Russian “deoffshorization” policy. Deloitte experts will be pleased to discuss, among others, the new rules for issuing the tax residency certificates for Cypriot companies.**

**For more information, please use the following [link](#).**

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