

Substance – Risk Exposure



November 2020

International developments

Substance becomes a critical element in international tax planning. New rules on substance have been enacted in:

- The new EU Parent/Subsidiary Directive;
- The EU Commission's proposed anti-tax avoidance Directive;
- The Based Erosion and Profit Shifting (BEPS) action plan; and
- The domestic legislation of various countries (Russia, Greece etc.).

Risk exposure

Lack of sufficient substance may lead to the taxation of the operations of a company in another jurisdiction. Moreover, it may lead to the non-application of the beneficial provisions of the respective double tax treaty and/or an EU Directive.

It should be expected that Cyprus would come under increased pressure to improve its substance requirements

It is understood that the Cypriot tax authorities are already in the process of introducing similar substance requirements in Cyprus as those applicable in other EU member states and recently introduced requirements in the offshore centres mentioned below

Forms of physical substance in Cyprus

Physical substance can be achieved by:

- Appointing qualified Directors that are Cyprus residents, which will be involved in the decision making of the company. **Avoid** setting up a structure in which the Directors of the Cyprus company are coincidentally the same directors of the source company or appointing nominee Directors who are also Directors of other Cyprus companies.
- Maintaining fully fledged offices in Cyprus
- Employing full-time or part-time employees
- Relocating senior executives/decision makers to Cyprus

Physical Substance (contd.)

- Carrying out the accounting and HR functions in Cyprus
- Maintaining bank accounts with local banks, where income is first received and deposited. At least one of the signatories of the bank accounts should be located in Cyprus
- Owning a website that is operated from the employees in Cyprus
- Actively participating in the local business community/organisations (i.e. Charities, CIBA, CCCI)

Tax Residency for Cyprus Companies

Effectively in the Cypriot tax residency requirements there are **no requirements for:**

- Properly qualified directors with appropriate knowledge and expertise of the company's business
- Employment of qualified personnel
- Having properly equipped offices

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Tax Residency (contd.)

- Cyprus tax residency requirements are limited to the provision that a company is tax resident of Cyprus if it is managed and controlled from Cyprus
- If a company tax resident under domestic legislation in two contracting states, then the place of effective management overrides. It is thus important to know the substance requirements of the other state involved.
- Other EU international financial centres like the Netherlands, Luxemburg, Belgium and Ireland have already increased their substance requirements.

TAX HAVENS - Residency

Offshore centres which have introduced relevant legislation. In summary, the core requirements for substance for local companies include:

- Properly qualified directors and physical presence at board meetings to be held regularly in the respective jurisdiction
- Employment of qualified personnel in the jurisdiction. The number and employee qualifications must be in line with the company's operations;
- Properly equipped offices in the jurisdiction. The office area and other features must be in line with the company's operations;
- Proper and reasonable costs incurred in the jurisdiction for providing support to the company.

CYPRUS HOLDING COMPANIES

New levels of substance expected

- The board of directors should be suitably qualified for the specific needs of the company
- Respect all corporate and tax law filing requirements
- Have the necessary substance in people and premises
- Have sufficient substance to exclude letterbox and brass plate companies
- Physical substance may be required to be added if the holding company regularly buys and sells investments and regularly declares dividends

Enhancement of Substance Exchange of Information

- Tax residency of the directors
- Indemnity or any other relevant agreements signed by the directors of the company and the company's shareholders that exclude the responsibility of directors to perform any duties and submit copies of directors' employments agreements
- The level of the directors' remuneration
- The place and frequency of the meetings of the company's directors
- How many employees the Company has
- Company's bank accounts, who opened these bank accounts and who has authorization to execute transactions for these bank accounts

Substance Executive/Non-Executive Director(s)

- Depending on the operations of a Cyprus company, the economic substance may need to be further enhanced.
- To this end we can offer the option of a substance director(s) which will have the relevant experience and expertise to be included in the Board of Directors of the company to further justify the Cyprus Tax residency position of the company.

- Such Directors need to be in a position to run the company and have the adequate knowledge to take decision and not just follow someone else's instructions (i.e. UBO).
- Our office can provide people that possess a relevant CV to justify the activities being undertaken from Cyprus.

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Part-time employee

- A part time employee can also be provided by us, to be shown as an employee of the company in order to further enhance the substance in Cyprus
- We are in a position to arrange employment of local person(s) who are qualified accountants to be registered under the company's name, and capable in undertaking accounting functions as well as handling all administration matters of the company in Cyprus
- Salaries of part-time employees and other officers of the Company must be at a level acceptable in the market service sector and the nature and responsibilities of such officer and position held, and services expected from these officers and part-time employees.

Nominee Director(s)/Shareholder(s)

- It must be stressed that in order for the company to be considered as tax resident in Cyprus, it must be managed and controlled in Cyprus, thus it is recommended that the majority of the Board of Directors to be Cyprus residents.

DADLAW Business Centre

To mitigate any exposure risks we can offer you the use of designated office spaces in our established DADLAW Business Centre, which is ideally located in John Kennedy Avenue, in the centre of Nicosia. Our freehold premises cover approximately 1500 square meters, offered for the exclusive use of our international clients. It includes the following:

- The right of use of an office space at the building whenever required, including office furniture, equipment and stationery;
- Secure access to the building during working hours of the Company;
- High speed internet/ Wi-Fi the building
- The right to use a conference room, subject to availability. Conference rooms are equipped with high technology audio/visual equipment;

- Secretarial services including handling of visitors, reception, meeting management and other reasonable secretarial support;
- Cypriot domain registration, e-mail and webmail access (optionally-recommended). Includes simple website design and implementation);
- Access to photocopiers, printers, scanners and fax machines;

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- Central common use telephone line will be provided;
- Use of the kitchen of the building;
- Cleaning and maintenance support;
- Assignment of a local telephone and fax number-landline;
- Dedicated receptionist to answer calls in your Company's name at the assigned local telephone number;
- IT support;
- Dedicated mailbox at the building's entrance;
- Illuminated signage with the Company's name outside the door of the Suite.



The DADLAW Business Centre is located in the heart of Nicosia's business world, the capital of Cyprus, incl. government agencies and other amenities, such as the Hilton Hotel, the Central Bank of Cyprus, the Headquarters of Bank of Cyprus, and the Registrar of Companies. The entire building is freehold and has recently been refurbished and fully equipped to accommodate all the needs of a business



- Size: 1.500 sq.m.
- Three floors, plus the ground floor which is used as a reception area and hosts a number of meeting/conference rooms (includes a mezzanine floor)
- One basement floor – includes storage and 11 parking slots.





The basement parking facilitate executives with quick and easy access to the building



From one-to-one meeting rooms to 12-person conference rooms, all equipped with high-end technology

Freehold parking area for both staff and clients (capacity of 25 cars). Located 30 metres away from the office (1 min. walk).



Final note

The substance levels mentioned above are non-exhaustive

Above suggestions which is not the result of any EU Directive but new ideas and information as to what other states have introduced or are about to introduce to increase the level of substance they would like to see.

Specialised personnel, executive and non-executive directors must be chosen according to the activities of the company.

We can propose executive and non-executive directors and their CV's to be interviewed by the Investors
We can provide suites of any size with facilities in DADLAW Business Centre in Kennedy Avenue in Nicosia.

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Please note that this is material for guidance only and not a tax advice to be relied upon, but you may contact us to advise you to set up the proper level of substance, always depending on the activities of the company, and the nature of services to be provided from Cyprus.

DADLAW would be pleased to advise recipients of this document on how to apply the principles and the provisions of the relevant legislation set out herein to their specific circumstances and requirements