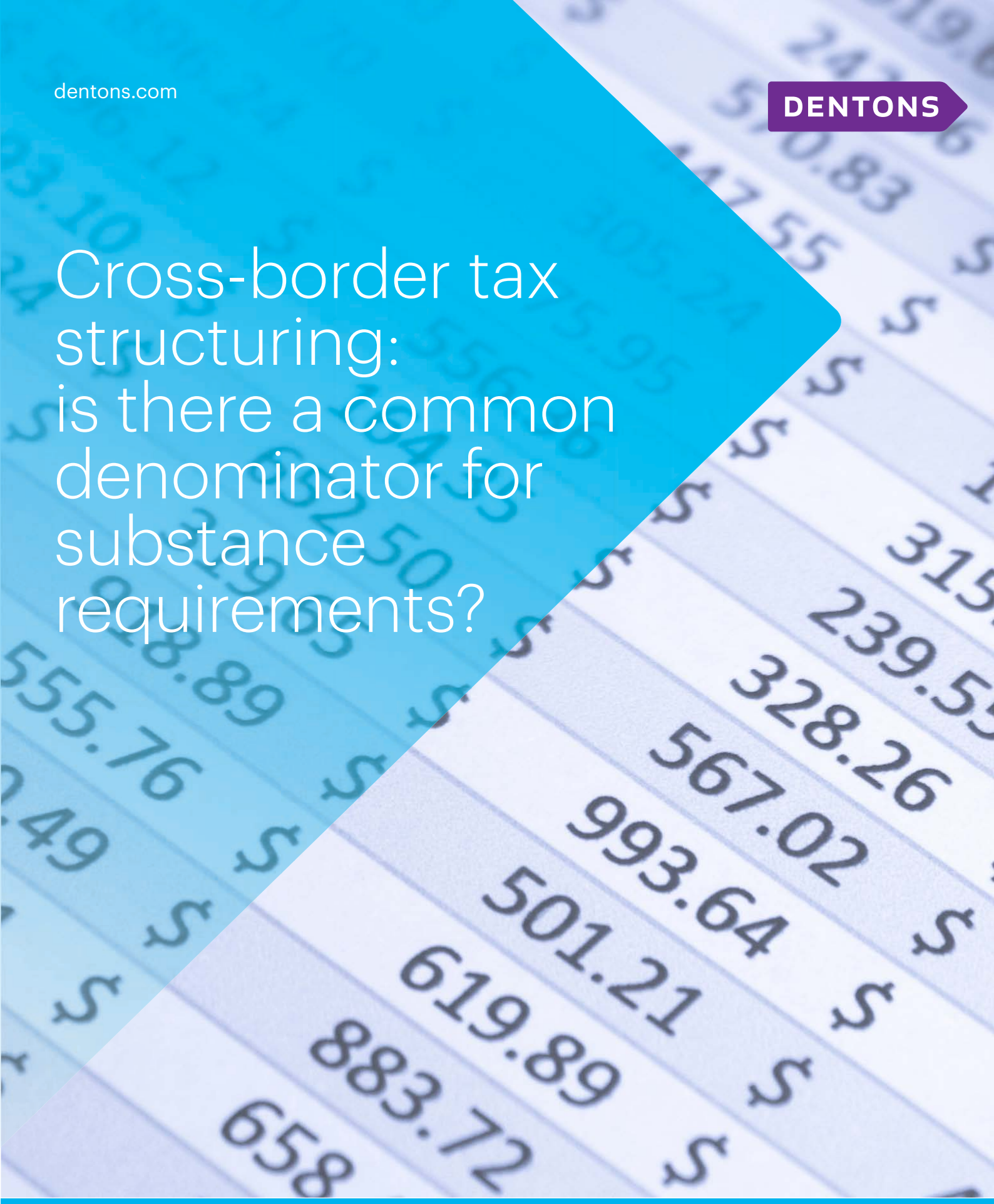
dentons.com

DENTONS

Cross-border tax structuring: is there a common denominator for substance requirements?



Vox Tax

This Dentons global tax report has been prepared with a contribution from Loyens & Loeff

Contents

Vox Tax Editor-in-Chief
Viktoriia Fomenko
viktoriia.fomenko@dentons.com

Notes from the Editors

Dear Reader,

The current downturn has caused policy makers in numerous countries to question the tax planning strategies of many multinational groups. The OECD has decided to place particular emphasis on this very topic; its latest report specifically addresses base erosion and profit shifting situations. It states that actual business activities are generally identified with elements such as sales work force, payroll and fixed assets. It indicates that **increased scrutiny should be put on entities with no or few employees, little or no physical presence in the host economy, whose assets and liabilities represent investments in or from other countries and whose core business consists of group financing or holding activities.** This is how they refer to "special purpose entities", as examples: financing subsidiaries, conduit, holding companies, shell companies, shelf companies and brass plate companies.

Whatever the approach retained, arm's length requirements for permanent establishments, or treaty shopping, **it clearly appears that legislation will be passed at various levels allowing tax authorities around the globe to tackle tax structures more effectively under the angle of artificial tax planning without appropriate economic substance.**

This edition of Vox Tax is dedicated to treaty shopping and substance - hot topics in many jurisdictions. Double Taxation Agreements negotiated between two countries are aimed, precisely, at reducing double taxation. However, many countries have observed that an entity wishing to do business in another country may circumvent unfavorable tax treaty treatment by interposing a company in a third country, deriving benefits from the situation. For these reasons and others, countries look for counter measures against "treaty shopping".

Most countries have a collection of specific legislation to prevent treaty shopping, including specific limitation on benefit rules, anti-abuse rules, abuse of treaties principle, residency requirements and/or beneficial ownership requirements. Preventing tax avoidance can be achieved in many ways. For example, the tax rules may simply prescribe the tax consequences of a defined transaction in all circumstances; or the tax law may create a presumption which the taxpayer has to rebut if the transaction is allowed to operate unchanged. Likewise, tax rules may disallow the transaction only where the taxpayer entered into the transaction with the purpose of achieving a particular tax outcome.

Many jurisdictions require a certain level of presence (or substance) in their jurisdiction before they allow a company the benefits of their local tax legislation and tax treaties. Substance requirements vary from country to country; the requirements in some countries are relatively low.

Multinational companies try to generate an optimal return for their shareholders, partly by reducing their effective global tax rate. They operate in a global environment where tax systems differ widely from country to country. Tax

authorities frequently create differences between tax systems intentionally in order to attract foreign investors. Multinationals use these differences to their advantage to achieve a low effective tax rate, thereby increasing shareholder value.

Historically, tax planning was often done without reference to the operational structure of the company. Therefore, such structures often lack economic substance. **In this issue of Vox Tax, we draw your attention to the importance of substance in international tax planning and emphasize why structures which lack economic substance are under ever increasing scrutiny by tax authorities around the world.**

This issue consists of 14 national reports prepared by Dentons Global Tax Group and Loyens & Loeff in the Netherlands. Each report consists of two sections: 1) the substance/residency requirements applied to a local presence of a foreign company; 2) the substance requirements applied to a foreign company established in a foreign country. The substance/residency requirements are summarized in the table following the editorial notes.

This issue of Vox Tax does not constitute tax advice; readers should note that tax authorities' views on "guidance" are regularly refined, so the statements made in this report are not definitive. However, this guide does provide an indication of the factors tax authorities currently consider and is a useful reminder to multinationals to check that their tax strategy is sufficiently solid to deal with increased scrutiny from tax authorities.

We want to express our gratitude to all contributors from Dentons' offices worldwide and to Loyens & Loeff who prepared the analysis. Special thanks is also due to Viktoriia Fomenko from Dentons Kyiv as Chief Editor for this edition. Her professionalism and enthusiasm in coordinating the reports from 14 countries has been of invaluable help.

Please do not hesitate to contact our contributors for any further clarification needed.

Yours sincerely,

Neil Bass
Canada Tax head

Sandra Hazan
Europe Tax Head

Marc Teitelbaum
US Tax Head

Alex Thomas
UKMEA Tax Head

Comparative Table

Requirements	Canada	Czech Republic	France	Germany	Hungary
Are there any specific requirements as to "presence" or "substance" of a foreign					
Local address	N/A	Yes	Yes	Yes	Yes
Local bookkeeping	N/A	No	Yes[1]	Yes	No
Local bank accounts	N/A	N/A	N/A	N/A	No
Local resident employees on the payroll	N/A	N/A	N/A	No	No
Minimum staff on the payroll	N/A	No	N/A	No	No
Local board meetings	N/A	Yes	Yes	Yes	Yes
Board members	Yes[4]	N/A	Yes[5]	No	No
Place of management	Yes	Yes	Yes	Yes	Yes
Business activities	No	N/A	Yes	Yes[8]	Yes[9]
Is residency certificate required to confirm residency of a foreign company?					
Residency certificate	No[12]	No[13]	Yes	Yes	No[14]
Is there specific legislation to prevent treaty shopping?					
Limitation-on-benefits (LOB) rules	Yes	"Substance-over-form" principle	Yes	Yes	Yes
General anti-avoidance rules (GAAR)	No	No	Yes	Yes	Yes
Abuse of treaties principle	No	"Abuse of law" principle	No	Yes	No
Beneficial ownership requirements	Yes	No	Yes	No	No

[1]This is not formally required but is recommended.
[2]This is not (yet) formally required but is recommended in the light of the current OECD discussions about base erosion and profit shifting.
[3]This is not (yet) formally required but is recommended in the light of the current OECD discussions about base erosion and profit shifting.
[4]25% of the directors must be Canadian residents. Some provinces of Canada do not have this requirement.
[5]Local expertise shall be in place.
[6]It is advisable that the board consists of directors who have special knowledge and expertise.
[7]The specific requirements depend on the US State where the company is formed.
[8]In case German tax residents are the ultimate beneficiaries of the company in a foreign country, and this company is deemed to be taxed at a low rate, passive income can be allocated to its German tax-resident beneficiaries.
[9]Real economic presence entails economic activities (aimed at profit) using own equipment and own workforce.
[10]Certain requirements apply to financial companies.
[11]Some types of activities may be subject to US income tax.
[12]A non-resident company may be required to complete a Declaration of Eligibility for Benefits under a Tax Treaty.

Netherlands	Poland	Romania	Russia	Slovak Republic	Spain	Ukraine	UK	US
company in a foreign country:								
Yes	No	No	N/A	Yes	Yes	N/A	N/A	N/A
Yes	No	No	N/A	No	Yes	N/A	N/A	N/A
Yes	No	No	N/A	No	Yes	N/A	N/A	N/A
N/A[2]	No	No	N/A	No	Yes	N/A	N/A	N/A
N/A[3]	No	No	N/A	No	Yes	N/A	N/A	N/A
Yes	No	No	No	Yes	Yes	No	Yes	No
Yes	No	No	No	No	Yes	No	No[6]	Yes[7]
Yes	Yes	No	No	Yes	Yes	No	Yes	No
Yes[10]	No	No	No	No	No	No	No	No[11]
No	Yes	Yes	Yes	No[15]	Yes	Yes	No	No[16]
Yes	No	No	Yes	No	No	No	Yes	Yes
Yes	No[17]	No	No[18]	No[19]	Yes	No	Yes	No
Yes	No	No	No	No[20]	No[21]	No[22]	Yes	No
Yes	Yes	Yes[23]	Yes	No[24]	Yes	Yes	Yes	No

[13]This is not formally required but is recommended.
[14]Residency certificate may be required only on a limited number of occasions as there is no withholding tax in Hungary.
[15]This is not formally required but is recommended.
[16]A non-resident company may be required to complete the specific form which depends on the specific benefit being claimed.
[17]There is a specific anti-avoidance rule which refers to mergers and demergers only.
[18]The general anti-abuse doctrine (the so called "unjustified tax benefit" doctrine) was developed by the RF Supreme Arbitration Court in 2006.
[19]There is substance-over-form rule.
[20]Slovak tax authorities recognize "abuse of tax treaty principle" in practice.
[21]The rule of "substance-over-form" is generally applied by the Spanish tax authorities and courts.
[22]The rule of "substance-over-form" is generally applied by the Ukrainian courts.
[23]Apply with respect to passive income subject to Polish domestic withholding tax exemption.
[24]May be used in connection with the taxation of dividends, interest and royalties under some DTTs.

Ten survey questions

The substance/residency requirements applied to a local presence of a foreign company

Question 1 Does your respective country require a certain level of "presence" (or substance) in the country before allowing a company benefits of local tax legislation and/or double tax treaties?

Question 2 How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

The substance requirements applied to a foreign company established in a foreign country

Question 3 Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing a company the benefits of local tax legislation and/or double tax treaties?

Question 4 What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

Question 5 Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Question 6 Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

Question 7 Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

Question 8 Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

Question 9 Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Question 10 Does the legislation of your country provide for specific legislation to prevent treaty shopping:

- specific limitation on benefit (LOB) rules;
- the general anti-avoidance rule (GAAR);
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

Canada

Canada

Tony Schweitzer
tony.schweitzer@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" or substance in the country before allowing a company the benefits of local tax legislation and/or double tax treaties?

Under Canadian tax rules, a company incorporated in Canada, or that is otherwise resident in Canada because it is managed in Canada, will be subject to Canadian tax on worldwide income. For a non-resident corporation, Canadian tax only applies if the non-resident carries on business in Canada or disposes of "taxable Canadian property" (generally real property and resource properties and entities that derive their principal value from such property). The threshold for carrying on business is generally low, but under Canada's tax treaties there is only Canadian tax if the non-resident carries on business in Canada through a permanent establishment. A Canadian subsidiary of a non-resident or permanent establishment may be able to use certain credits and deductions and may be able to take advantage of reduced rates or exemptions from withholding tax that are contained in Canadian tax treaties.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

Other than a small number of "grandfathered" corporations, all corporations incorporated under Canadian federal or provincial law are resident in Canada for tax purposes. For a foreign-incorporated corporation, the applicable test is to determine where the central management and control of the corporation is actually exercised. This is generally the place where the board makes decisions.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing a company the benefits of local tax legislation and/or double tax treaties?

Canadian tax authorities will generally rely on self-assessment and documentation provided voluntarily by a non-resident company. Occasionally, the Canada Revenue Agency (the "CRA") may communicate with a treaty-country if the CRA has particular concerns regarding a self-assessment or supporting documentation. The CRA may also expect the non-resident company to complete a Declaration of Eligibility for Benefits under a Tax Treaty. This process requires the non-resident company to submit their foreign tax identification number, along with other pertinent information, to the CRA. This declaration is used by Canadian tax authorities to confirm that the non-resident company is a resident of a foreign country with which Canada has a treaty.

More recently, Canada has been signing an increased number of Tax Information Exchange Agreements with non-treaty countries. Tax Information Exchange Agreements are bilateral agreements that are meant to facilitate the exchange of taxpayer information to enhance Canada's administration, enforcement and collection of taxes.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?

Generally, Canada's tax treaties require that the recipient of income be the "beneficial owner" of such income in order to obtain a reduced withholding tax rate. There have been a number of recent court decisions where the CRA has challenged the entitlement of a non-resident to treaty benefits on the basis of the recipient not being the beneficial owner of the income. The CRA has not been successful in these challenges.

However, in some circumstances, limitation on benefit provisions must be met in order to obtain treaty benefits (for example, the Canada-US treaty).

Any non-resident company must file a corporate tax return and complete certain schedules in order to claim the benefits of a tax treaty. The relevant schedules require information pertaining to the non-resident company's physical facilities, as well as information regarding the residence, wages, and physical presence of the company's employees and subcontractors in Canada. The CRA will verify

this documentation and may act accordingly.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or other directors of a company?

Under most Canadian statutes, at least 25% of the directors of a corporation must be Canadian residents. Some provinces do not have this requirement.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

Generally, Canada looks to the place in which the central management and control of a corporation is exercised, and not the residency of the directors.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

Canada has no requirement as to the type of business activities to be performed or not to be performed by a foreign company in a foreign country in order to fulfill "presence" or "substance" criteria.

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

In Canada no formal requirement exists to obtain a residence certificate of a foreign company. However, the CRA may require a non-resident company to complete a Declaration of Eligibility for Benefits under a Tax Treaty. This requires the taxpayer to complete form NR301, NR302, or NR303 depending on whether the taxpayer is a corporation, partnership, or hybrid entity, respectively. Generally, the information to be provided by the non-resident in Form NR301 includes the non-resident's legal name, type of entity, mailing address, foreign tax identification number, Canadian tax number (if any), country of residence for treaty purposes and the type of income for which the declaration is being made. NR301 also includes a certification that the non-resident is the beneficial owner of the payment. The above forms expressly provide that, for withholding tax purposes, the forms expire at the earlier of (i) a change in the effective rate of withholding; and (ii) three years from the end of the calendar year in which the form is signed and dated.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Pursuant to most Canadian tax treaties the CRA will look to the 'beneficial owner' of the Canadian corporation when examining treaty shopping for the purpose of minimizing withholding tax on dividend payments. There is also a limitation on benefit provision contained within the Canada-US tax treaty. Canadian courts have held that the beneficial owner is the person who receives the dividends for his or her own use and enjoyment and assumes the risk and control of the dividend he or she received. As such, the corporate veil will only be pierced in the most egregious of circumstances, such as when the corporation located in the treaty country is a conduit for another person and has absolutely no discretion as to the use or application of funds.

Question 10. Does the legislation of your country provide for specific legislation to prevent treaty shopping?

As of 2013, only the Canada-US tax treaty contains a comprehensive limitation-on-benefits provision, and Canadian authorities have announced that it is not Canadian policy to seek such provisions in other treaties. Under Canada's tax treaties, a person is a resident of one of the countries if he or she is "liable to tax" by reason of one of several enumerated criteria. Canadian courts have held that "liable to tax" in the treaty context means being liable to as comprehensive a tax regime as imposed in the country. For Canada this means taxation on worldwide income. In some countries, it will be source based taxation. As stated in question 9, the concept of 'beneficial ownership' is also used by Canadian courts to address treaty shopping.

Overall, it has generally been acknowledged that the CRA has

not been successful at challenging treaty shopping in Canadian courts. Recently, the 2013 budget announced that the government of Canada will be consulting with the public in taking possible measures to prevent treaty shopping and to protect the Canadian tax base.

Czech Republic

Czech Republic

Petr Kotab
petr.kotab@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing a company the benefits of local tax legislation and/or double tax treaties?

The Czech Income Taxes Act ("ITA") does not explicitly require any form of additional "presence" or "substance" for a company to benefit from the Czech tax laws and double tax treaties to which the Czech Republic is a party ("DTTs") provided that the company qualifies as a Czech tax resident. To qualify, a company (or any other legal entity) must have its seat (i.e., registered office) and/or place of management in the Czech Republic. The place of management is not further defined or explained in ITA but based on the application and interpretation practice of tax authorities and courts it means the place in which the supreme executive body of a corporate taxpayer (such as the board of directors, sole director or general manager) adopts managerial decisions and/or exercises the control and management of the day-to-day business of such taxpayer. If either the seat criterion or the place of management criterion is met in respect of a company, such company is by law (subject to applicable DTT) considered a tax resident without the need to meet other "presence" or "substance" requirements.

An applicable DTT may set somewhat differently phrased tax residence criterion for a corporate taxpayer, such criterion usually being the principle place of management or the place of effective management. The interpretation of such terms is usually identical to the term "place of management" as used in ITA. Save for exceptional cases where dual tax residence is resolved by agreement of the tax authorities of the DTT signing parties and where other auxiliary criteria such as "business presence", "corporate substance" etc. on the territory of the Czech Republic may be taken into view, there are no other prerequisites for a Czech resident company to benefit from an applicable DTT.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

As mentioned above, the substance requirements (apart from the place of management) are hardly ever applied in practice by Czech tax authorities or courts.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing a company the benefits of local tax legislation and/or double tax treaties?

Interaction between Czech and foreign tax authorities is usually limited to dealing with suspected cases of tax avoidance or with unclear tax situations of specific taxpayers. Administrative assistance abroad is normally not sought when dealing with standard cases of non-resident taxpayers claiming tax benefits under local tax laws or DTTs. Nevertheless, since many benefits are based on the determination of the foreign resident status of a company, it is quite customary that a foreign tax residence certificate is required to support the claim of such benefits. This rather formal requirement, however, is addressed to the non-resident taxpayer itself who must obtain the tax residence certificate from the tax authorities of its home country, rather than the Czech tax authorities liaising directly with the foreign country's tax authorities about this issue (or about the issue of "presence" or "substance" there).

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

Ideally, for a foreign company to be regarded as a non-resident in the

Czech Republic for tax purposes it should have its seat (registered office, headquarters) at a local address in a foreign country as well as its place of management there (as evidenced, for example, by holding local board meetings there). The other criteria listed in the question are usually not considered although in complex disputed cases they may have a secondary relevance.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Currently, there are no such specific requirements in place in the Czech Republic. A temporary residence in the Czech Republic for foreign directors of a Czech company, which used to be required in the last two decades, is no longer required now.

In rare disputed cases of tax residence, it may be relevant for the determination of the place of management which nationals compose the board of director or other managerial body of a corporate taxpayer, where they hold regular meetings or, there being no or too few such meetings, where the directors/managers have their personal residence and/or where they usually exercise their directorial/managerial duties.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

For a foreign company to qualify as a tax non-resident under ITA and/or DTTs, its place of management must be outside of the Czech Republic. In disputed cases evidence of various types of this non-Czech place of management may be necessary or advisable including evidence of the existence of an operating office (headquarters), place and infrastructure for taking managerial decisions, etc. Such presence or substance tests are always focused on the "presence" of management in a foreign country rather than any other type of presence (presence of ordinary trading, manufacturing, service-providing or other business activities).

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in a foreign country in order to fulfill "presence" or "substance" criteria?

As mentioned above, there are no such specific requirements incorporated explicitly in ITA. When in rare disputed cases the presence criteria are tested, they relate exclusively to the presence of management and not of other business activities.

Question 8. Is a residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

Although there is no formal requirement of a tax residence certificate incorporated in ITA or other written tax laws, such certificate is regularly used in practice, in particular in connection with withholding taxes and DTT benefits relating thereto. It is therefore always advisable for a foreign recipient of Czech-sourced taxable income or for a foreign company with unclear or disputable tax residence status to obtain a tax residence certificate from the foreign tax authorities. There are no specific Czech requirements for such certificate. Often the form used by the foreign tax authorities is non-negotiable and has to be used "as is" which is generally accepted by Czech tax authorities. There are no fixed rules about the validity term of such document. Usually the certificate is viewed as valid for the period stated therein or for one taxable period (usually one year).

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

The treaty shopping as a principle is disapproved by OECD. Since most DTTs are built on the OECD model, the treaty shopping is generally not encouraged in them. The DTTs, however, do not contain any explicit clause banning treaty shopping.

A few rules contained in the DTTs can work as a de facto anti-treaty shopping measure. The most important of them is probably the concept of a "beneficial owner" in the articles of DTTs relating to dividends, interest and royalties. Under this concept, only the beneficial (and not formal) owner is granted the beneficial DTT treatment. The term

"beneficial owner", however, is not inherent to Czech law, and it is not defined in DTTs or in ITA.

Another rule working as an effective anti-treaty shopping measure is the rule about determining tax residence (mentioned above). By suppressing the formal criteria of residence (such as registered address) and requiring a form of material link to the country of residence (such as the place of management) DTTs are not so easy to be abused by treaty shopping practices.

Question 10. Does the legislation of your country provide for specific legislation to prevent treaty shopping:

- specific limitation on benefit (LOB) rules;

Currently not in place.

- the general anti-avoidance rule (GAAR);

There is no explicit GAAR in Czech tax law. However, the role of a general anti-avoidance rule is often performed by the substance-over-form rule incorporated in the Czech Tax Procedure Act. Several other partial anti-avoidance rules can also be found in ITA (fair market price rule, arm's length rule for affiliated dealing, thin capitalization rules, etc.).

- an abuse of treaties principle;

Although Czech tax laws contain no explicit anti-treaty shopping measures, the local courts and tax authorities recognize the term "abuse of law" which extends also to the abuse of DTT. This is regarded as undesirable behavior of taxpayers which the tax authorities supported by local courts attempt to eliminate wherever encountered (usually by disregarding DTT-based benefits in random or targeted tax audits).

- residency requirements; and/or

Czech tax authorities accept the place of management as the dominating factor of tax residence in the Czech Republic. This factor generally prevails over the formal factor of registered seat.

- beneficial ownership requirements?

Beneficial ownership is not a concept explicitly recognized or supported by Czech written law, including ITA. Nevertheless such concept is actively supported by tax authorities on the basis of DTTs (where it is often mentioned in connection with the taxation of dividends, interest and royalties) and even when the relevant DTT does not mention it (the concept of implied beneficial ownership which is yet to be tested in the courts).

France

France

Charlotte Robert
charlotte.robert@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefit of local tax legislation and/or double tax treaties?

In France, only profits made by companies operating an activity in France are subject to corporate income tax (section 209 of the French tax code). The place of activity determines whether a company is subject to corporate income tax and there is no minimum substance requirement to be met.

As a result, only foreign companies carrying out activity in France benefit from French legislation.

On the other hand, profits derived from companies operating outside of France are not taxable in France, although the accounting of these companies is centralized in France and the company's headquarters is based in France.

Double tax treaties apply only to companies subject to tax in France (i.e. companies carrying out activity in France as defined below).

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

French law does not detail the concept of companies carrying out activity in France. The substance requirements were established by French courts.

Companies having their headquarters in a foreign country are taxable in France when they carry out regular business in France by (alternative conditions):

- Operating in France through an **autonomous establishment** with a certain degree of permanence (this concept is close to the concept of permanent establishment used by tax treaties, but it is not strictly the same). The autonomy is characterized by the existence of separate staff, business services, and/or separate bookkeeping, and, more generally, by the presence of a place of management. The qualification of "autonomous establishment" is only based on facts analysis.

- Performing operations in France through **representatives without independent professional status** (when the representative has an independent status, the foreign company cannot be deemed to perform activity in France itself).

- As a part of **operations forming a complete business cycle**. This notion is specific to French tax law. Regular business in France can be the result of a complete business cycle of operations in France while the company has no French autonomous establishment or French representative (i.e. purchase and resale of goods in France).

In addition it should be noted that foreign companies earning French income and/or French capital gains relating to a French property are taxable in France.

The foregoing may not apply because of tax treaties provisions. The decisive criterion to determine the right to tax is the permanent establishment. The concept of permanent establishment is close to the French concept of "company carrying out activity in France".

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm the level of "presence" (or substance) in the other country before allowing companies the benefit of local tax legislation and/or double tax treaties?

The administrative assistance is frequently used by the French tax authorities when a company is established in another country, and it is suspected that the activity is actually carried out from France and not from the foreign country.

French international tax audit office's policy is based on widely exchanged information. According to the head of the international tax audit office, France sent 1,614 requests in 2011 to other countries (only for direct taxes). Most of these requests are related to the "substance" of foreign companies (IFA 2013: Exchange of information and cross-border cooperation between tax authorities, June 21, 2012 conference by Maïte Gabet, head of the international tax audit office).

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?

French tax law provides for several possibilities to challenge the "substance" of a foreign company (see question 9).

To characterize the "presence" or "substance" of a foreign company in a foreign country, French courts seek fulfillment of the two following elements (decision of the French Administrative Supreme Court dated April 15, 2011, Alcatel):

- **the reality of the company's local "presence"**: The condition is satisfied in case of local employees, real office space and equipment. The condition is not met when the foreign company has no activity, no employees, no local expertise or no office (only a mailbox and a registration number).
- **the effective exercise of an economic activity**: The condition is met in the situation where the company has a significant number of employees and generates a large turnover.

French courts generally consider that a company does not have "substance" or "presence" in a foreign country if the company has (i) no technical expertise and (ii) no management autonomy. (Decisions of the French Administrative Supreme Court dated February 18, 2004, société Pléiade and dated May 18, 2005 Société Sagal).

The absence of a local board meeting is also a criteria used to determine the level of presence of a foreign company.

To characterize the "presence" or "substance", the company has to be "real". According to French courts, a company without book-keeping, or a local board meetings cannot have a presence in a foreign country (decisions of the French Administrative Supreme Court dated February 27, 1980; May 10, 1973, SARL Elite Model Management, April 29, 2002, Michel Moitié)

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Local expertise is a requirement characterizing the presence of a foreign company in a foreign country (see question 4).

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

In French domestic law, the presence of a place of management is a demonstration of the presence of an autonomous establishment of a foreign country in France (see question 2).

Moreover, tax treaties concluded with France usually have a reference to "the place of effective management and control" which determines the "presence" and tax residency of the company. When a foreign company does not have a place of management abroad, as defined below, there is a risk that the company will not be considered a resident of this country by the French tax authorities. This issue has serious consequences, including whether or not the company will be treaty protected and enjoy corresponding benefits (as withholding tax cancellation or reduced rates).

France considers that the definition of the place of effective management

of article 24 of the OECD model tax convention according to which "the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made", will generally correspond to the place where the person or group of persons who exercise the most senior function (for example a board of directors or management board) makes its decision. It is the place where the bodies of management and control are, in fact, mainly located (OECD commentary, C (4) n°26.3).

French tax authorities use the same definition, and the place of effective management is construed as the place where the person or group of persons with the highest management functions (i.e. board of directors) makes decisions. It is also specified that determining the place of effective management is a factual issue. A company may have several seats, but it has only one place of effective management.

French corporate law determines the law applicable to a company by the place of its corporate seat. If the office is purely fictive and does not match the place of management, third parties may indifferently rely on the registered office or real management office (sections 1835 and 1837 of the French civil code).

According to French courts, a foreign company is deemed to have its place of effective management in France, when:

- a foreign company has a seat but no activity abroad but French resident managers (Decision of the Administrative Court of Appeal dated March 10, 2008, Société Madrigal Servicios Limitada);

- a foreign company with no employees, no phone or facsimile number, and whose current management operations are outsourced to a third party while the manager is a resident of France, who signs contracts and uses the company's cheque books (Decision of the Administrative Court of Appeal dated June 11, 2008, SA ANA Holding).

Thus, groups of companies should ensure that the company created abroad complies with the "substance" or "presence" requirements, especially regarding foreign holding companies whose activity is passive financial investments. It should be ensured that the foreign holding company has a place of effective management in the country.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

As mentioned above, it may be difficult for a foreign company whose corporate purpose is to hold financial investments to comply with the "presence" or "substance" requirements. Many disputes relating to the absence of "substance" of foreign companies are related to the activity of financial investment.

In that situation, the foreign company will have to demonstrate that it has local expertise in financial investments and has met some of the requirements mentioned in question 4 (i.e. local office, local board meeting, etc.)

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are

there any specific requirements to such document? What is the validity term of such document?

A residency certificate is required by the French tax authorities in situations where a reduced taxation is available to non-residents (the idea is to prevent residents avoiding residents taxes by pretending to be non-residents).

When a company can enjoy a reduced withholding tax rate thanks to a tax treaty, a residency certificate must be provided. A decree dated December 20, 2005 sets specific forms to use (for dividends, interests and royalties). These forms have various references to control the correct application of tax treaties.

According to French courts, these forms may be required legally by the French tax authorities, only if:

- the double tax treaty enables the authorities to set up these forms (this is common in modern double tax treaties);

and

- the measure has been published in the "Journal Officiel" (i.e. official publication of enacted laws and regulations in France).

When a reduced withholding rate is granted to a non-resident company by domestic laws, the French tax code is generally silent about the document to be provided. The French tax authorities may admit as evidence a certificate of the foreign tax authorities, a tax notice if sufficiently explicit. A declaration on honor is generally not sufficient.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Double tax treaties concluded with France include an increasing number of anti-treaty shopping provisions:

- **Beneficial owner**: this is a provision under which withholding tax or exemption on dividends, interests or royalties provided by tax treaties are only granted to the beneficial owner of such income. Double tax treaties do not apply if the beneficiary is not the "real beneficiary" and acts only as an agent or a representative. Double Tax Treaties do not generally provide for a clear definition of the "beneficial owner".

French tax authorities generally consider that conduit companies should be denied beneficial ownership. An interposed holding company (in a long chain of ownership) whose unique role is to cash-in and upstream passive income earned from operating subsidiaries is a "conduit company". If dividend received is entirely redistributed (with no reinvestment of any sort) in a very short time-frame, this may characterize a "conduit" attitude.

French courts control that the provisions of a Double Tax Treaty are only granted to beneficial owner, even if the tax treaty does not provide for a specific provision;

- **Limitation on benefits**: this aims to exclude some residents of the benefit of a tax treaty. The most successful example is the provision of the United States-France tax treaty. It is provided that the tax treaty applies to a resident of a contracting state only if additional conditions are met. These additional conditions are very detailed. For example, companies cannot enjoy treaty protection if they are regarded as being controlled by non-residents and do not satisfy some "tests" described in the convention.

- Other tax treaties provide for specific provisions to prevent treaty shopping.

For example, in addition to the percentage of ownership, treaties concluded with Belgium, Italy, and the United States provide for a holding period requirement to allow the reduced withholding tax on dividends distributed to parents companies. This provision prevents arrangements only set up to enjoy a tax treaty.

Treaties concluded with Great Britain and Japan provide for a "good faith" provision whose purpose is to deny treaty benefits to residents who act under artificial arrangements.

Question 10: Does the legislation of your country provide for specific legislation to prevent treaty shopping?

French tax legislation recently introduced a measure to dissuade persons from conducting transactions with non-cooperative countries and territories ("NCCT"), considered as not satisfying international standards in the fight against tax fraud and tax evasion. Transactions carried out with these

countries are subject to restrictive measures, such as increased withholding tax rates applicable on income paid or on profits realized in France by persons established in NCCTs, exclusion from the benefit of favorable tax regimes, etc.

Section 209 B of the French tax code provides for the taxation in France of profits realized in entities established in tax heavens. The profits of the foreign company based in a tax haven are subject to French corporate income tax.

French legislation also sanctions "abuses of law" situations as fictitious and purely tax driven to the extent they are made for the sole motive of reducing the normal tax burden by applying the letter of the law against its genuine purpose (the criteria used are those mentioned under question 4).

The French Government has presented a law designed to strengthen the fight against tax evasion and financial crime. The draft law establishes a "tax police" to combat tax evasion and creates an "aggravating circumstance" for the most serious types of tax fraud, notably fraud conducted through fictitious or artificial domiciles abroad, or through the interposition of any person, company, organization, trust or similar institution established abroad. The French tax authorities would be allowed to use illicit information (i.e. stolen data).

The French National Assembly has just begun examining the law. Therefore, information mentioned above may eventually be amended.

In light of these enhanced penalties and the extension of the investigative powers of the French tax administration, it seems more important than ever to best meet the French substance requirements.

Germany

Germany

Oliver C. Ehrmann
oliver.ehrmann@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing a company thebenefits of local tax legislation and/or double tax treaties?

Yes, in order to be subject to German tax legislation and/or German DTTs, a company has to be tax resident in Germany. In this regard, a distinction must be made between (i) full/unlimited tax liability and (ii) limited tax liability.

A company (corporations and partnerships both, the latter only regarding trade tax purposes) is by principle subject to an unlimited tax liability, if its registered seat or its effective place of management is in Germany.

A company is only subject to a limited tax liability, when it neither has its registered seat nor its effective place of management in Germany, but the company does generate domestic income through:

- Fixed place of business or permanent establishment;
- Instructing a permanent agent in Germany who is consistently acting for and on behalf of the company;
- Domestic real property; or
- (several other domestic income sources).

In order to become eligible for the benefits of the German DTTs, a company has also to be tax resident in Germany or the respective treaty state, with only slightly different requirements as stated above (seat or effective place of management in Germany or maintaining a permanent establishment or instructing a permanent agent).

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

The tax authorities tend to assume a company being tax resident in Germany if there are some indications of a domestic place of management or permanent establishment.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm the level of "presence" (or substance) in the other country before allowing companies benefits of local tax legislation and/or double tax treaties?

German has signed a large number of DTTs or supplementary agreements according to which a wide range of administrative assistance between the respective tax authorities can be requested. One must assume that the German tax authorities do make use of these means, although no official numbers are published.

Additionally, German tax authorities do regularly request certificates of tax residence, as companies with international business operations bear the burden of proof that they are actually not tax resident in Germany.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

According to German tax law, a company is tax resident abroad, when it neither has its registered seat nor its effective place of management in Germany. The main requirement for a place of management is that the necessary day-to-day business decisions of some importance are made on a continuing basis, usually by the managing directors of the company. The following points can only serve as indications in this regard:

- A local address or even real office space;
- Local bookkeeping and bank accounts; local telephone land lines

As long as it is possible to prove that the day-to-day business decisions of some importance are made abroad, there is no requirement for minimum staff on the payroll or local resident employees on the payroll. Principally, it would even be possible without maintaining any fixed place of business, to fly in the management personnel just for the board meetings.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Principally not. However, if the local personnel allegedly acting

as managing directors and/or board members do not seem to be sufficiently competent and knowledgeable for running the day-to-day business of the company, the tax authority might question their role and might suspect that the decisions are made by different persons not working in the respective country.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

Yes, please see answer to Q 4.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

In case German tax residents are the ultimate beneficiaries of a company in a foreign country, and this company is deemed to be low taxed (less than 25% tax on its profits) and derives passive income, this income can be allocated to its German tax-resident beneficiaries. Active income in this regard could be e.g. agriculture, the production of goods, in some cases also trade income or rendering of services, as long as such services are not actually performed by the company's German tax-resident beneficiaries or performed by the company to the ultimate beneficiary.

Question 8. Is a residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

Please see answer to Q 3. There are no specific requirements explicitly set forth. Usually these residency certificates are requested for every financial year.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

- Reservations in the double tax treaty regarding the application of local law treaty shopping rules (e.g. Malta, Switzerland, Singapore)
- Switch-Over-clauses: In case of white or low-taxed income through a qualification conflict, the foreign income would not be tax exempt in the other country but credited against the tax burden (e.g. Italy, Austria, Russia, USA).

Question 10. Does legislation of your country provide for specific legislation to prevent treaty shopping?:

- specific limitation on benefit (LOB) rules; Yes, see below at "abuse of treaties principle".
- the general anti-avoidance rule (GAAR); Yes, not specifically against treaty shopping.
- an abuse of treaties principle; Yes. According to sec. 50d para 3 German Income Tax Act, (i) the exemption or reduction of dividend tax according to double taxation treaties and (ii) the exemption or reduction of withholding tax on e.g. license payments is suspended if (i) the shareholders of the respective company would not be entitled to such benefits themselves and the company's income does not derive from the company's own business activity and (iii) (alternatively):
  - there are no evident economic reasons (other than a beneficial taxation) or
  - the company does not maintain an appropriately organized business undertaking
- residency requirement; and/or No.
- beneficial ownership requirements? No.

Hungary

Hungary

Zsolt Szatmári

Tamás Tercsák
tamas.tercsak@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies the benefits of local tax legislation and/or double tax treaties?

Yes.

A company is resident in Hungary if it is incorporated under Hungarian law or has its place of management in Hungary. A foreign company is deemed to be resident in Hungary if its actual place of management is in Hungary (i.e. board meetings are held and decisions are made in Hungary).

Hungarian-registered subsidiaries, registered branch offices, and non-registered permanent establishments of foreign companies are taxable under ordinary Hungarian rules.

No special procedural requirements apply to obtain benefits under Hungary's tax treaties.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

The most common issue regarding foreign companies is whether they have a permanent establishment in Hungary.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies the benefits of local tax legislation and/or double tax treaties?

Direct communication between the tax authorities is – according to our experience - not frequent in this regard. On some occasions the Hungarian tax authority may request a residency certificate from the foreign tax authority (please see Question 8).

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?:

As a general rule the place of management and the real economic presence are decisive factor.

- A local address or even real office space; Real office space is required, a mere postal address is not enough
- Local bookkeeping and bank accounts; Not decisive
- Local resident employees on the payroll; Residency of employees not relevant
- Minimum staff on the payroll; Not defined but for real economic presence own workforce is necessary.
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings? Yes, this is relevant to determine the place of management

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

No

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

Yes, please see Question 4

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

Real economic presence entails economic activities (aimed at profit) such as manufacturing, processing, agricultural, service, investment and trading activities, using own equipment and own workforce.

Question 8. Is a residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

There are a very limited number of occasions when a residency certificate is requested, as there is no withholding tax in Hungary. In case of a reclaim of foreign VAT request, a residency certificate should be attached to the request. Please note that this

procedure is only applicable in the EU or if the DTT has such a provision (for Hungary solely Switzerland and Lichtenstein). Furthermore, due to the place of supply rules, services provided to taxable persons established abroad are tax exempt. To support this, the Hungarian taxpayer may need to present the residency certificate of its business partner. The tax authority accepts the copy of the Hungarian official translation of the residency certificate issued by the foreign tax authority.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Beneficial ownership requirements (e.g. USA, Qatar, Mexico, Great Britain, Germany), Limitation of benefit rules (e.g. USA, Mexico, Israel)

Question 10. Does legislation of your country provide for specific legislation to prevent treaty shopping?

- specific limitation on benefit (LOB) rules; Yes, rules relating to controlled foreign companies
- the general anti-avoidance rule (GAAR); Yes
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

Note: A controlled foreign company is a company ultimately owned by Hungarian tax resident private individuals ("CFC"). A CFC is a foreign company in which a Hungarian individual holds directly or indirectly at least 10% of the shares or most of the income is derived from Hungary, and the foreign company is effectively taxed at a rate less than 10%. Certain income received from a CFC that normally would be exempt is taxable. In addition, undistributed profits of the CFC are taxable in the hands of the Hungarian resident shareholder. CFC rules do not apply to foreign entities established in EU and OECD member states and countries that have concluded a tax treaty with Hungary, if the foreign entity has real business presence (has own assets and employees, 50% of the revenue comes from actual business activity) in that country.

Netherlands

Netherlands

Rob Cornelissei
rob.cornelisse@loyensloeff.com

Janneke Versantvoort
janneke.versantvoort@loyensloeff.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies the benefits of local tax legislation and/or double tax treaties?

Companies that are considered to be tax resident in the Netherlands are subject to Dutch corporate income tax on their worldwide profits. Dutch resident companies fully benefit from local tax legislation and Double Tax Treaties benefits.

For Dutch corporate income tax and dividend withholding tax purposes a company is treated as resident if it is situated in the Netherlands based on "facts and circumstances."[1] The most important criterion for the determination of these facts and circumstances is the effective place of management. A company is also considered to be a tax resident of the Netherlands, if the company has been incorporated under the laws of the Netherlands.[2] (should be footnote superscript)

Non-resident companies will be subject to Dutch corporate income tax if they derive profits from a business carried on in the Netherlands through, among others, a permanent establishment or an agent[3] and if benefits arise from real estate situated in the Netherlands.[4] Furthermore, non-resident companies will be subject to Dutch corporate income tax for their taxable income from a substantial shareholding (as a general rule, 5% or more) in a company resident in the Netherlands to the extent this substantial shareholding cannot be attributed to a business enterprise, and the substantial interest is held with the main purpose (or one of the main purposes) to avoid Dutch individual income tax and/or Dutch dividend withholding tax of another person.[5] If the substantial interest is held only to avoid dividend withholding tax (i.e. not to avoid individual income tax), the corporate income tax liability is effectively limited to a 15% rate over dividend distributions. In general a Dutch non-resident company can benefit from local tax legislation to the extent applicable to the profits from a business carried on in the Netherlands. A Dutch non-resident company has limited Double Tax Treaties benefits.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

In order to obtain Advance Tax Rulings (hereafter "ATR")[6] and Advance Pricing Agreements (hereafter "APA"),[7] certain conditions with respect to "substance" and risks have to be fulfilled.

The Dutch Ministry of Finance published a Decree in 2004[8] (hereafter "the Decree") listing the minimum "substance" requirements for companies requesting an ATR or APA. Although the Decree has been published for so-called "Financial Services Companies", which include finance companies and royalty companies, the requirements of this Decree are in practice used as a general guideline by the tax authorities to determine the place of residence of a company in the Netherlands.

The Dutch substance requirements based on the Decree are:

(a) At least half of the total number of the statutory directors and the directors competent to make decisions reside in the Netherlands (individuals) or have their place of effective management in the Netherlands (non-individuals);

(b) The directors resident in the Netherlands (individuals) or having their place of effective management in the Netherlands (non-individuals), have the professional knowledge required to properly perform their duties;

(c) (Key) managerial decisions must be taken in the Netherlands;

(d) The legal entity's (main) bank accounts must be maintained in the Netherlands;

(e) The legal entity's accounts must be kept in the Netherlands;

(f) The legal entity must have complied with all of the relevant requirements in respect of the submission of tax returns, at least until the date on which its application is assessed;

(g) The legal entity's registered office must be located in the Netherlands. The legal entity is, to the best knowledge of the entity, not (also) regarded as tax resident in another country;

(h) The legal entity's equity must be adequate in relation to the functions performed (taking into account the assets used and the risks assumed). The risk requirement is similar to the risk requirement of article 8c CITA, i.e. the minimum amount equity that is at risk must be the lower of (i) 1% of the funds lent or (ii) € 2 million.

The consequence of not meeting the substance and/or risk requirements is that the APA or ATR may be terminated by the Dutch tax authorities, that the company may not credit foreign withholding taxes incurred on its interest/royalty income against its Dutch corporate income tax liability and that the Dutch tax authorities may spontaneously exchange information about the company's activities with the tax authorities of other countries.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing a company the benefits of local tax legislation and/or double tax treaties?

According to Dutch law, the Dutch tax authorities can only request administrative assistance from foreign tax authorities if Treaties or EU legislation[9] allow the Netherlands to request for administrative assistance.[10] The exchange of information should also be in accordance with the "general principles of proper conduct", such as the 'anti abuse of power principle', 'principle of proportionality', and the principle of 'balancing interest'.

Further to the yearly report for the year 2011 of the Dutch tax authorities, the Dutch tax authorities requested administrative assistance 412 times, this number includes all kinds of taxes (i.e. direct and indirect taxes). No official statistics are published with regard to requests for administrative assistance for the confirmation of the level of "presence" in the requested state.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?

The "presence" of a foreign company situated in a foreign state could be of importance if that foreign company claims treaty benefits in the Tax Treaty between that foreign state and the Netherlands. Generally, a company has the right to apply for the respective Tax Treaty if its place of residence is situated in one of the states party to the Tax Treaty. Most Dutch Tax Treaties have a similar residence provision as defined in article 4 of the OECD model tax convention. For the purposes of this provision, a company is a resident of one of the states if, under the laws of one of the states, the company is liable to tax[11] therein by reason of its domicile, residence, place of management or any other criterion of a similar nature.

When the company resides in one state and its place of management is carried on in another state, the company will also be resident in that other state for tax purposes and therefore become a so-called dual resident company. Under most Tax Treaties concluded by the Netherlands, the place of effective management is the decisive criterion in determining the residence of a company (i.e. the tie-breaker). Under

some Tax Treaties, such as the Tax Treaty with the United Kingdom, the place of residence in case of dual resident companies is to be determined by mutual agreement.

For the Dutch interpretation of the "place of management" in Tax Treaties, several Dutch courts ruled that further to paragraph 1 of article 4 of the OECD model tax convention, in case a company is also a resident of another state and fully liable to tax in that other state, the Dutch tax authorities must rely on the decision of the other state for the company's residency in that other state.[12] However, if the Dutch tax authorities prove that the information used for the decision of the residency of the company and the full tax liability by the foreign tax authorities is incorrect, incomplete or if the levy cannot reasonably be based on a rule of foreign legislation, Tax Treaty benefits may be denied.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

- Pursuant to the Tax Treaty the company will be resident in the State in which the place of effective management is situated. The OECD commentary to article 4 of the OECD model tax convention is used by Dutch courts for the interpretation of the concept of place of effective management as defined in the Tax Treaties concluded by the Netherlands.

  According to paragraph 24 of the OECD commentary, the place of management is the place where the key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made, i.e. the place where the actions to be taken by the entity as a whole are, in fact, determined. All the relevant facts and circumstances must be examined to determine the place of effective management. It is the place where the organs of direction, management and control entity are, in fact, mainly located.[13] Consequently the residency and knowledge of the board members and/or directors of a company are important for this qualification.

- Based on Dutch case law, if a foreign company moves its corporate seat to the Netherlands or when a Dutch company moves its corporate seat to another state, the key element to determine whether the company has really moved is the place of effective management. If the effective management is performed by another person or body than the members of the board, the place of effective management is situated at the place where the actual management is performed, at the level of that other person or body.[14] The effective management is more than doing the day-to-day administration of a company.[15] Indirectly, knowledge of the effective management is required to be able to make the key decisions for a company.

- In order to obtain a Dutch APA or ATR, conditions with respect to "substance" and risk based on the Decree (see question 4) have to be fulfilled. Type, residency and knowledge of the board members and/or directors of a company are essential for meeting these Dutch "substance" requirements.

Question 6. Does your respective country require that place of

management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

The "substance" of company is important in the Dutch interpretation and determination of the "place of management" in Tax Treaties. The Underminister of Finance mentioned that for a company without any physical possession or property and personnel, the domicile of the managing board and the place where the board meetings are held are of relevance.[16]

See also question 4.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

The nature of business activities of a foreign company that claims Tax Treaty benefits and is situated in a foreign state are not explicitly mentioned in the OECD commentary or limited by the Dutch Minister of Finance.

However, if a Dutch company performs financial services within the group (i.e. financing or licensing activities) certain requirements with respect to the substance in the Netherlands and real risk must be met (see Dutch requirements of the Decree in question 2) in order to obtain an APA or ATR and credit foreign withholding taxes incurred on its interest/royalty income against its Dutch corporate income tax liability. Furthermore, it prevents the Dutch tax authorities from spontaneously exchanging information about the company's activities with the tax authorities of other countries.

Furthermore, a certain level of "substance" is required at the level of foreign subsidiary companies engaged in group finance activities in order to qualify for the Dutch participation exemption.[17] The Dutch participation exemption only applies to low-taxed foreign group finance subsidiaries if such subsidiaries are both largely (i.e. 50% or more) and actively engaged in direct or indirect group finance activities. Generally, low-taxed companies which are not active as a group finance company are considered to be passive portfolio investments and do not qualify for the Dutch participation exemption.

Question 8. Is a residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

It is not (automatically) required to provide a residency certificate to confirm the residency of a foreign company if a foreign company claims Tax Treaty benefits granted in the Tax Treaty between that foreign state and the Netherlands.

In this respect the Court of Appeal has recently ruled that the certificate of residence, used as proof in that specific case, was not a very trustworthy source when it came to proving a company's effective place of management[18]. The Court of Appeal argued that a certificate of residence of a state is only based on the limited facts and circumstances that a taxpayer provides to the tax authorities of that state.

Question 9. Assess how if at all Treaty shopping is addressed in double tax treaties to which your country is a party?

The Dutch government tries to limit Treaty shopping of Dutch Tax Treaties. In this respect please note that general anti-avoidance rules (see question 10) can be put aside when a special anti-abuse provision is applicable under the respective Tax Treaty. Therefore the Netherlands have introduced several anti-abuse provisions in the Tax Treaties to which it is a party. For example:

- In case of non-business like circumstances, several Tax Treaties have anti-abuse provisions in relation to dividend, royalties and interest. These provisions restrict transactions which are solely entered into with the intention to receive benefits from the specific provisions under the Tax Treaty. For example, the Tax Treaty with Switzerland has an anti-abuse measure for dividend income included in the Tax Treaty (article VIII of the protocol), which states that a taxpayer cannot invoke the benefits of the dividend article, if the relation between the company paying the dividends and the receiving company has been established or maintained mainly for purposes of taking advantage of such benefits.

- The principle of "beneficial owner" is an important element of Articles 10, 11 and 12 on dividends, interest and royalties in most Tax Treaties concluded by the Netherlands. Based on the Tax Treaties concluded by the Netherlands, the source state must generally reduce its withholding tax on dividend, interest or royalties. This favourable reduced withholding tax rate is only applicable if the receiver of the source income is the beneficial owner of this income (see also question 10).

- The Netherlands concluded a specific limitation on benefits provision with, among others, the United States of America (article 26 of the NL-US Tax Treaty). This provision more or less expresses the "anti-Treaty shop" policy of the United States of America. The provision tries to prevent residents of a state, which have concluded a less favourable regime or no Tax Treaty at all, to use the Tax Treaty concluded by the United States of America and the Netherlands to create a structure which has a more favourable tax position with the application of this Tax Treaty. Such provision is also included in the Tax Treaty between Japan and the Netherlands (article 21) in which only a "qualified person" can benefit from several treaty benefits.

- Under some Tax Treaties concluded by the Netherlands, such as the Tax Treaty with Latvia, Estonia, the United Kingdom, the United States of America, and Canada, the place of residence in case of dual resident companies is to be determined by mutual agreement between the contracting states. If no agreement is reached, the contracting states are not required to grant the dual resident company treaty benefits. The dual resident company will, without a mutual agreement, remain a resident of both contracting states for Tax Treaty purposes and this might lead to situations of double taxation (for example, double levy of dividend withholding tax or double levy of corporate income tax). However, potential double taxation in some situations might not occur as a result of the domestic tax rules of the states involved. Under the domestic laws, a dual resident company might be entitled to an arrangement to avoid double taxation (such as the participation exemption or credit/refund systems).[19]

Question 10. Does the legislation of your country provide for specific legislation to prevent treaty shopping?

- specific limitation on benefit (LOB) rules;

  The Netherlands concluded a specific limitation on benefits provision with, among others, the United States of America and Japan. These provisions more or less express the "anti-treaty shop" policy of the other state. See question 9.

- the general anti-avoidance rule (GAAR);

  The Netherlands has a limited number of anti-abuse provisions. The dividend withholding tax exemption on the basis of the EU Parent-Subsidiary Directive or on the basis of Tax Treaties does not apply in case of certain dividend stripping scenarios or in case the dividend is paid to a company established in a state with which the Netherlands has concluded a Tax Treaty which contains an anti-abuse clause which would be applicable in the given situation. An example of a Tax Treaty which contains an anti-abuse clause is the Tax Treaty with Malta.

- an abuse of treaties principle;

  In the Netherlands, a general anti-abuse rule is the principle of ignorance of artificial or simulated transactions by the Dutch tax authorities and courts through a determination of the facts rather than the form, "substance over form". There is a specific provision that prevents transactions of which the main purpose is the avoidance or the abuse of law (fraus legis). The general abuse of law or fraus legis doctrine has evolved through Dutch case law. Under the fraus legis doctrine, the tax authorities can ignore a legal transaction for tax purposes if the sole or predominant purpose of the transaction is to avoid tax, and the ultimate effect of the transaction conflicts with the objective of the law.

  The Dutch Supreme Court has not yet ruled that the principle of fraus legis can be applied in cases of the "improper" use of double tax conventions (generally referred to as

fraus tractatus or fraus conventionis) and allowed itself little room to apply this principle in case of Tax Treaty interpretation. However, this principle seems to be applicable in a legal setting that provides a result contrary to the objective and purpose of the respective Tax Treaty provisions as intended by the Tax Treaty parties involved. [20]

- residency requirements; and/or

  The Netherlands has imposed the administrative Decree, in which a Dutch company should meet certain substance requirements before it can claim treaty benefits (see question 2).

- beneficial ownership requirements?

  The Netherlands has separate rules regarding the beneficial ownership of a dividend.[21] The Dutch legislation applies an economic interpretation to the term beneficial owner. Under the Dutch rules, a recipient of a dividend is not considered to be a beneficial owner when it has given a consideration in connection with the dividend as part of a series of structured transactions, and it is likely that the proceeds of the dividends, either wholly or partially, have benefited another person who would have been subject to dividend withholding tax, and this person has directly or indirectly retained the same or a similar interest in the underlying equity instruments.

[1]Article 4 General Tax Act.

[2]Based on article 2 paragraph 4 Corporate Income Tax Act 1969 (hereafter "CITA") and article 1 paragraph 3 Dividend Withholding Tax Act 1965 (hereafter "DWTA").

[3]Based on article 17, paragraph 3, subparagraph a CITA.

[4]Based on article 17a, paragraph a CITA.

[5]Pursuant to article 17, paragraph 3, subparagraph b, CITA.

[6]For advance certainty regarding, among others, the application of the participation exemption.

[7]For transfer pricing issues regarding, among others, confirmation of the at arm's-length character of conditions applied in related party transactions.

[8]Ministry of Finance Decree dated 11 August 2004 (IFZ2004/125 +126M).

[9]Such obligations can be found in: the Council Directive 2008/55/EC, the Commission Regulation 1179/2008.

[10]The request for administrative assistance is also subject to several Dutch restrictions under the "Wet op de internationale bijstandsverlening bij de heffing van belasting" ("WIB"; Act on international assistance in levying taxes) and the Treaty that applies to the provision of information upon request. See the EU directive on mutual assistance (77/779 EEG; "EU directive"), as implemented in the WIB.

[11]"Liable to tax" does not mean that taxes are actually levied and collected at the level of the taxpayer; the formal liability to tax is enough for this determination. See OECD commentary, C (4) n°8.6 and case law: Supreme Court, BNB 2009/92 and BNB 2009/93.

[12]Supreme Court, BNB 2007/38.

[13]OECD commentary, C (4) n°26.3.

[14]Supreme Court, BNB 1993/193.

[15]Supreme Court, V-N 2012/13.11.

[16]See the paragraph 2.2.1. of the official enclosure to the letter of the Dutch Underminister of Finance dated 25 June 2012 (IFZ/2012/85).

[17]According to article 13, paragraph 12, sub b, under 1 CITA and Art. 2a of the Implementation decision corporate income tax 1971 (Uitvoeringsbeschikking vennootschapsbelasting 1971). In short, the "substance" conditions as set out in the aforementioned provisions require that the company is independent in running its business, uses the company's own bank account for relevant financing transactions, has its own office space and has sufficient and qualified personnel.

[18]Confirmed in Supreme Court, V-N 2012/42.18.

[19]For instance the Dutch participation exemption, article 13 CITA.

[20]See in particular Supreme Court, BNB 1986/127, BNB 1990/45 and BNB 1994/249 and 259, similar decisions: BNB 2003/285c, BNB 1995/150; BNB 2007/42 and others.

[21]Dutch Dividend Withholding Tax Act article 4, paragraph 3, Supreme Court, BNB 1994 / 217 and BNB 2001/196.

Poland

Poland

Dariusz Stolarek
dariusz.stolarek@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefits of local tax legislation and/or double tax treaties?

Polish corporate income tax (CIT) legislation provides for two "presence" tests in order to determine if a company is a Polish tax resident (i.e. subject to Polish CIT on its worldwide income): (i) a registered office test and (ii) a management test. If either of the above tests is met, the company is a Polish CIT resident.

The registered office test is a quite formal and an easily verifiable requirement. With regard to the management test, although wording of the Polish CIT legislation does not explicitly require the company to be effectively managed in the territory of Poland or by Polish management board members, in practice, according to the Polish Ministry of Finance (e.g. a letter of 14 May 1996), it is passed if key commercial decisions on the company's operations are taken in Poland (i.e. the management test refers to the effective management as provided in the OECD Model Tax Convention).

With regard to double tax treaties concluded by Poland, if the Polish seated company is effectively managed abroad, the standard tiebreaker rule of the relevant tax treaty applies. Namely, the place of effective management is decisive in determining the state of tax residency of the Polish seated company. Consequently, if the Polish company is effectively managed e.g. in France, it may be potentially viewed as a French tax resident subject to French domestic tax residency regulations.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

Since, due to the registered office requirement, it is relatively easy for the company to become a Polish tax resident, if the foreign capital groups wish to benefit from the Polish tax residency, they simply set up Polish seated companies. Therefore, there is a very limited practice in applying substance requirements (referring to the management test) by the local tax authorities or courts. It is, however, reasonable to presume that when it comes to assessing the substance requirements under the management test, the following sample criteria should be taken into consideration (in line with the Commentary to the OECD Model Tax Convention): where the meetings of the company's board are held, where the CEO and other senior executives usually carry on their activities, where the accounting records are kept and alike.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing a company the benefits of local tax legislation and/or double tax treaties?

A request for assistance from the foreign tax administration is not a well-recognized or frequently used tool of gathering tax information by the Polish tax authorities. Nevertheless, the clear trend is that the number of such requests increases each year.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

There is a limited practice of the Polish tax authorities in analyzing if a foreign company is in substance a foreign tax resident. In order to prove the foreign tax residency, the foreign company provides the tax certificate confirming its foreign tax residency (issued by the foreign tax administration). For further details regarding tax residency certificates, please refer to Question 8.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

There are no specific requirements in the Polish tax law as to type, nationality, residency and knowledge of the board members and/or directors of a company to prove the company's foreign tax residency. However, these criteria may theoretically be used as auxiliary factors for the purposes of the effective management test (although, we have not seen cases where such criteria were analyzed by the Polish tax authorities).

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

The Polish tax regulations do not formally require that foreign taxpayers have their place of management situated and/or that decision making is to take place in the foreign country to satisfy a required level of the foreign presence"(or substance).

However, if the Polish tax authorities identify the company with such an effective management in Poland, they may claim under the domestic management test that the company is a Polish tax resident. In such a way, the Polish domestic management test would indirectly influence a perception of the foreign tax residency of the foreign company. If there are doubts as to the tax residency of the foreign company, the tiebreaker rule of the relevant tax treaty would apply. Since most commonly, the tiebreaker rule refers to the effective management test the final decision on the tax residency would most probably be made based on the effective management criteria provided by the Commentary to the OECD Model Convention.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

The Polish tax regulations do not provide for requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence"or "substance" criteria.

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

The tax certificate issued by the foreign tax administration is a basic and, in practice, most important tool for the Polish tax authorities to confirm the foreign tax residency of the foreign company.

This mostly stems from the fact that, under the Polish tax regulations, the tax residency certificate is a formal requirement to reduce the Polish withholding tax rates. This refers to the tax reductions provided for in both the Polish domestic legislation and the double tax treaties concluded by Poland.

There are no formal requirements as to the wording of the foreign tax certificates – it should clearly confirm the foreign tax residency of the foreign company. If the certificate refers to a specific period of time, a new tax certificate should be obtained for the following period. Under the current tax practice, the certificates issued for an indefinite time are valid until the circumstance change – in the meantime the foreign company may be obliged to represent that the circumstances based on which the certificate was issued in the past have not changed

Under the current tax practice, the certificate may be provided following the withholding of tax at the reduced rate; however, in order to benefit from the reduced tax rate, the certificate provided at a later date should confirm the tax residency of the foreign company as at the time of withholding the reduced tax.

Question 9. Assess how - if at all - treaty shopping is addressed in double tax treaties to which your country is a party?

Generally, the basic tool for avoiding treaty shopping in the Polish tax treaties is a concept of a beneficial ownership of the passive income. In a nutshell, under this internationally well-recognized concept, the Polish tax authorities may not allow for benefits of the tax treaty with state A if the company of that state receives passive income (such as dividend, interest and royalties) from Poland and transfers

it further (back-to-back) to the other company from state B (an economic/ beneficial owner of the income).

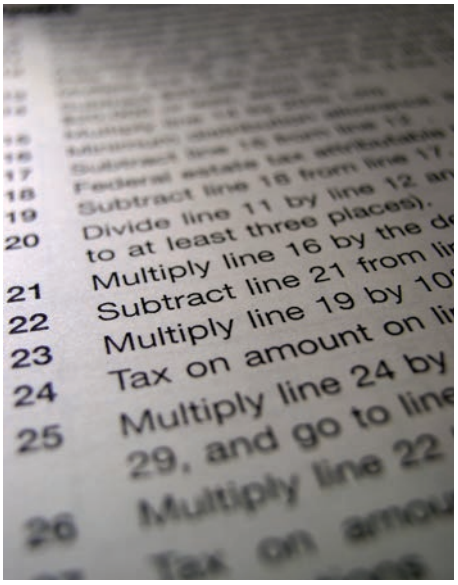
In practice, however, the tax authorities rarely verify the beneficial ownership of the passive income transferred to the foreign companies. It does not mean, however, that no special attention should be given to the planning of the passive income transfers.

It is also noteworthy that lastly the Polish Ministry of Finance has taken actions to renegotiate and amend the double tax treaties providing various tax exemptions or other tax advantages. This particularly refers to tax treaties with Cyprus and Luxembourg. Importantly, the amended treaty with Luxembourg will provide the limitation of benefit clause, under which the Polish tax authorities may not allow tax treaty benefits if a given transaction was an artificial arrangement (i.e. mainly aimed at obtaining tax advantages).

Question 10. Does the legislation of your country provide for specific legislation to prevent treaty shopping:

- specific limitation on benefit (LOB) rules;
- the general anti-avoidance rule (GAAR);
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

Generally, the Polish domestic tax regulations do not provide for effective



anti-avoidance tools for the Polish tax administration. Currently, there is no general anti-avoidance rule (there was one in the past but it was finally abolished as being in breach of the Polish Constitution). There is a specific anti-avoidance rule, however, it refers to mergers and demergers only and, in practice, it is generally relatively easy to prove that these restructuring transactions have business substance and that achieving tax advantages is not their key objective.

The only regulation enabling the tax authorities to reclassify the business transactions for tax purposes is Article 199a of the Tax Code (regulating evidentiary proceedings) under which the tax authority, while establishing the content of a given act in law, may take into account both the mutual intention of the parties and purpose of the act and not just the literal wording of declarations of intent. Additionally, if, while disguised as one act in law, another act is performed, the tax consequences may follow from the disguised act in law. Moreover, if the evidence collected in the course of proceedings and, in particular, depositions of a party shall cast doubts on the existence or non-existence of a legal relationship or right having tax consequences, the tax authority shall request a common court to ascertain the existence or otherwise of such a legal relationship or right. It is noteworthy that Article 199a of the Tax Code is rarely applicable since most commonly the entities involved in the transaction process will present their intentions in a clear and open manner, do not conceal any other simultaneous underlying transactions, and they actually perform the declared transactions.

Please also note the Polish tax regulations may be interpreted as providing for the beneficial ownership concept with regard to passive income subject to Polish domestic withholding tax exemption. This refers to the tax exemption resulting from implementation of the EU Parent-Subsidiary Directive.

It also noteworthy that on 6 December 2012 the European Commission published an Action Plan to strengthen the fight against tax fraud and tax evasion and which sets out recommendations to the EU member states on the measures to be taken to prevent, inter alia, treaty shopping. The Action Plan may become a stimulus for the Polish government to introduce more comprehensive tax anti-avoidance rules.

Romania

Romania

Delia Dragomir
delia.dragomir@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefits of local tax legislation and/or double tax treaties?

Yes. A fixed base is required (e.g., registered office) or effective management conducted in/from Romania.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

Romanian tax authorities can freely assess (that is, considering all factual elements, substance, cause of transactions) whether an entity actually has a fixed base in Romania from where it conducts business or if effective management occurs in Romania. Also, such aspects like the capacity of a representative to engage a foreign entity into legal agreements is also assessed.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence"(or substance) in the other country before allowing companies the benefits of local tax legislation and/or double tax treaties?

Until recently, Romanian tax authorities were not used to asking information from the authorities of other countries. However, recently, this practice has started to change and, though not often, they do ask information from tax authorities from other countries, especially EU member states.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

A company is considered resident if its head office is registered in Romania or if it has its effective place of management in Romania. However, permanent establishments are deemed any fixed bases from which an entity can operate its business directly or by way of a dependant agent.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Romanian Law does not impose any nationality, residency or knowledge requirements for the board members or for directors of a company.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Romanian Law does not impose any nationality, residency or knowledge requirements for the board members or for directors of a company.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

Romanian legislation does not require that the place of management be located in Romania in order to qualify a permanent establishment. However, as already mentioned above, if there is an office or other fixed place available to the foreign entity in Romania through which that company can pursue its business a permanent establishment would exist.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

No permanent establishment can be deemed present in Romania if, for example, a fixed place of business is maintained only to carry out auxiliary activities for the foreign entity.

In order to avoid creating a permanent establishment for a foreign entity, its employees/ contractors acting in Romania should not act as the dependent agents of the foreign entity that are able to bind such foreign entity. Thus, the eventual employees' activities should be limited to auxiliary activities such as providing information to the foreign company on potential investments or presenting the company and its products. The employees/contractors should not sign transactional documents and should not undertake binding obligations on behalf of the foreign entity. Furthermore, the employees should not be deemed as having the authority to make any typical business decisions on behalf of the company in Romania.

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

A tax residency certificate is asked by the Romanian tax authorities in order to confirm the residency of a foreign company. There are no special provisions, provided such document is issued by the authorities having the power to issue such certificates in that respective country. A tax residency certificate presented to the Romanian authorities during a certain year is valid also for the first 60 days of the coming year as well.

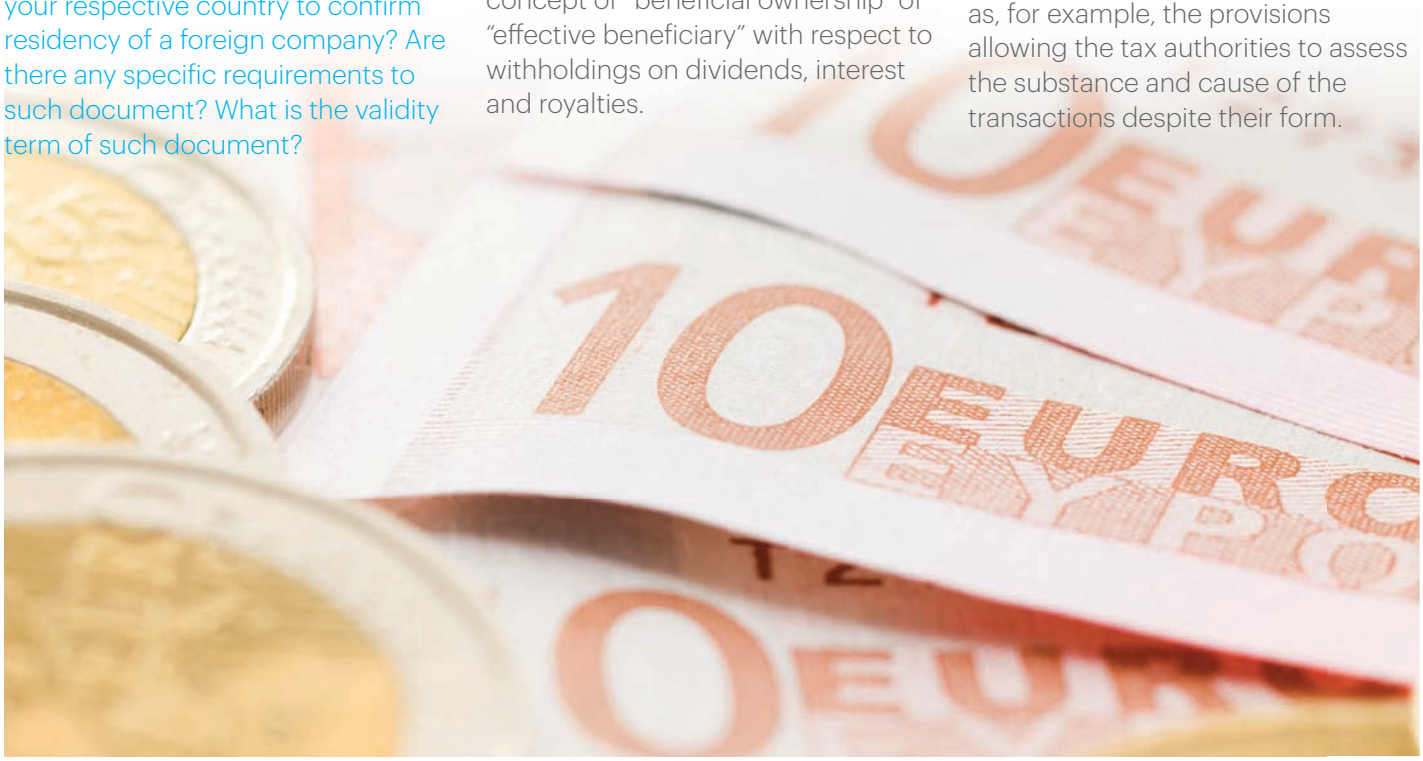
Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Romanian legislation, including most of the double tax treaties concluded by Romania, does not contain specific limitations with regard to treaty shopping. It addresses the treaty shopping issue by using the concept of "beneficial ownership" of "effective beneficiary" with respect to withholdings on dividends, interest and royalties.

Question 10. Does legislation of your country provide for specific legislation to prevent treaty shopping:

- specific limitation on benefit (LOB) rules;
- the general anti-avoidance rule (GAAR);
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

As shown above, Romanian relevant legislation does contain requirements as to residency, and it refers to "beneficial ownership" of "effective beneficiary" concepts. However there are no specific GAARs, rather targeted anti-avoidance rules, such as, for example, the provisions allowing the tax authorities to assess the substance and cause of the transactions despite their form.



Russia

Russia

Boris Bruk
boris.bruk@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefits of local tax legislation and/or double tax treaties?

Russia applies incorporation criterion to determine the tax residence of companies. Russian companies are always deemed Russian tax residents and foreign companies are always deemed non-resident taxpayers. Thus, Russian tax law employs no specific presence/ substance requirements for Russian companies to enjoy local tax and treaty benefits.

The government is planning to introduce a secondary (alternative) "management and control" tax residence test for foreign companies, but we are not aware if these plans to have been put on paper at the moment.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

N/A

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies benefits of local tax legislation and/or double tax treaties?

We are aware of a number of cases where the Russian tax authorities employed the treaty exchange of information procedure in order to obtain information regarding foreign companies. However, we would not consider these cases as frequent. It should be noted though that a number of Russian double tax treaties (in particular, those with Cyprus, Luxembourg and Switzerland) have been amended to broaden the scope of exchange of information provisions, which clearly indicates in our view that the volume of exchange of information between the Russian and the foreign tax authorities will increase in the future.

In respect of granting treaty benefits, the tax authorities would usually require that a foreign company provides a tax residence certificate to be issued by a competent authority of the state of which the company is a tax resident, apostilled and accompanied with a certified translation into the Russian language.[22] It is advisable that the tax residence certificate be obtained by the foreign company and made available to its income paying Russian counter party prior to the first instance of transfer of income (otherwise the Russian counter party may be reluctant to apply treaty benefits, e.g. reduced withholding tax rate) in respect of income it pays to the foreign company).

At the moment we are not aware of any cases where the Russian tax authorities have challenged the tax residence of a foreign company that provided the properly furnished tax residence certificate based on facts and circumstances, although this reaction cannot be entirely excluded.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

There are no statutory requirements in respect of the level of "presence" of a foreign company in its residence state. Since there is nosubstantial administrative or court practice on the matter it is not possible to indicate the requirements that would be used by the tax authorities in practice.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

No.

Question 6. Does your respective country require that place of management is to be situated and/

or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

No.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

No.

Question 8. Is a residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

Yes, see Question 3 above. Usually the tax authorities and the courts are not sophisticated enough to require the renewal of the tax residence certificates on a yearly basis or indication in the certificate of a particular year in respect of which the tax status of the foreign company is confirmed. Nevertheless, it is advisable that the foreign company obtains a new tax residence certificate on an annual basis and ensures that the certificate indicates the year for which the tax residence status of the foreign company is certified.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party.

Most Russian double tax treaties contain beneficial ownership wording in respect of all or some types of passive income. Some treaties (e.g. those with Cyprus and the US) contain LOB provisions, although such practice is still exceptional.

Question 10. Does legislation of your country provide for specific legislation to prevent treaty shopping?:

- specific limitation on benefit (LOB) rules;
- the general anti-avoidance rule (GAAR);
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

Russian tax law contains no anti-abuse provisions (other than transfer pricing and thin capitalization rules). However, the general anti-abuse doctrine (the so called "unjustified tax benefit" doctrine) was developed by the RF Supreme Arbitration Court in 2006.

The "unjustified tax benefit" concept denies taxpayers tax benefits if their activities are entirely or predominantly aimed at obtaining these benefits (i.e. tax deductions or other reductions to the tax base, the application of a lower tax rate or a tax refund). An analysis of this doctrine demonstrates that it combines a number of concepts well-known in the international tax jurisprudence, such as "substance over form" and "business purpose" concepts. In addition, the "unjustified tax benefit" doctrine operates in conjunction with various tax law and civil law concepts, such as the concept of fictitious/sham transaction, the taxpayer due diligence concept and reclassification of transactions for tax purposes.

The cornerstone of the "unjustified tax benefit" concept is the assumption that a taxpayer acts in good faith. This assumption

is, however, rebuttable. The tax authorities may challenge the use of tax benefits by a taxpayer in certain circumstances, for example:

- where the transactions are documented or accounted for by the taxpayer contrary to their true economic substance;
- where there are no underlying reasonable economic grounds (no business purpose) for the activities of the taxpayer;
- where the taxpayer was unable to carry out the documented or accounted for transactions or to achieve the reported economic goals due to a lack of time or resources (for example, lack of staff, production capacity, etc.); and
- where the taxpayer dealt with counterparties (either customers or suppliers) that were knowingly involved in tax fraud (in particular, this concerns individuals or legal entities affiliated with the taxpayer).

On the other hand, the scope of the doctrine has been narrowed to exclude a biased interpretation of certain factors. For example, the following factors do not per se evidence an unjustified tax benefit (although they may evidence an unjustified tax benefit in combination with other facts in a particular context):

- the setting-up of an enterprise shortly before commencing activities leading to the receipt of a tax benefit;
- an affiliation between counterparties to a transaction that leads to a tax benefit;
- volatility in the volume of activities of an enterprise;
- the facts of tax fraud of the taxpayer in the past;
- the carrying out of a one-time transaction;
- the carrying out of activities outside the location of the taxpayer;
- the carrying out of activities through intermediaries;
- existing possibilities to achieve the same economic goals by structuring operations less tax efficiently;
- tax fraud committed by the taxpayer's counterparties (unless the taxpayer knew or must have known about the facts of the tax fraud when entering into a relationship with these counterparties, i.e. if the taxpayer is affiliated with the fraudulent counterparty).

If the court confirms that a tax benefit is unjustified, the tax benefit will be denied, i.e. the taxpayer will not get the deduction sought, will not be able to apply the lower tax rate or obtain the tax refund, which may trigger an additional tax assessment, as well as an assessment of late payment interest and administrative tax penalties (in some instances criminal penalties may also be imposed).

Although the "unjustified tax benefit" doctrine has been developed primarily to address the domestic tax abuse cases, it is the view shared by most tax professionals in Russia that the same concept may as well apply in cross-border situations. There is currently no developed case law concerning application of the concept in the international tax context, but this is just a matter of time.

Russian tax law does not envisage any LOB or beneficial ownership rules. This said, it should be mentioned that the government (in particular, the RF Ministry of Finance) is currently developing the rules concerning application of the beneficial ownership concept in Russia. The previous attempts which resulted in some initial draft bills having been revealed to the public were not successful (the drafts were severely criticized by the professional community and were withdrawn by the Ministry), but prevention of treaty shipping is considered one of the priorities of the government, so this work will likely continue.

[22]It should be noted that in respect of certain countries (e.g. Belarus, Cyprus, Germany, Kazakhstan, Moldova, Slovakia, Ukraine, the USA, etc.) the Russian tax authorities allow for the submission of the tax residence certificates without apostille. See, for example, Letter of the RF Ministry of Finance No.03-03-04/4/141 of 25 August 2006.

Slovak Republic

Slovak Republic

Peter Varga
peter.varga@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefits of local tax legislation and/or double tax treaties?

The Slovak Act on Income Tax ("SITA") does not explicitly require any form of additional "presence" or "substance" for a company to benefit from the Slovak tax legislation and double tax treaties to which the Slovak Republic is a party ("DTTs") provided that the company has its seat (i.e., registered office) and/or place of effective management in the Slovak Republic. According to SITA, the place of effective management is the place in which management is exercised and business decisions are taken by statutory (i.e., chief executive) and supervisory bodies of the company.

There are no explicit anti-treaty shopping provisions contained in SITA. However, in the application practice of Slovak tax authorities, treaty shopping may be regarded as tax avoidance. Taking benefit of DTTs by intermediary companies established in the Slovak Republic only for the purpose of facilitating flow-through of cash may be disallowed by Slovak tax authorities. Therefore, such approach by Slovak tax authorities may be viewed as a de facto requirement of a certain level of presence in the Slovak Republic.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

See the answer above.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies benefits of local tax legislation and/or double tax treaties?

In general, Slovak tax authorities frequently use their right to request administrative assistance from tax authorities of other jurisdictions. The investigation of Slovak tax authorities as to whether a company fulfills the presence requirement is carried out "on the go" basis. The trigger is the conclusion of Slovak authorities that the intention of a company is to use the foreign tax residence in combination with a DTT solely for tax avoidance.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

Ideally, for a foreign company to be regarded as a non-resident in the Slovak Republic for tax purposes it should have its seat (registered office, headquarters) at a local address in a foreign country and hold local board meetings there. The other criteria listed in the question are usually not considered although in complex disputed cases they may have a secondary relevance.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Currently, there are no such specific requirements in place in the Slovak Republic.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

According to SITA, the place of effective management in a foreign country along with the lack of a seat (registered address) in Slovakia constitute sufficient presence of a foreign company in a foreign country to grant such company the status of a tax non-resident in Slovakia. In most if not all of DTTs, the place of effective management is a decisive factor in case there is a dual tax residence claim

in respect of such company (by reason of the registered seat and/or place of management). Slovak tax authorities generally accept this treaty rule.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

According to SITA, there are no such specific requirements in the Slovak Republic currently in place.

Question 8. Is a residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

Although there is no formal requirement of a tax residence certificate incorporated in SITA or other written tax laws, such certificate is often used in practice, in particular in connection with withholding taxes and DTT benefits relating thereto. It is therefore always advisable for a foreign recipient of Slovak-sourced taxable income or for a foreign company with unclear or disputable tax residence status to obtain a residence certificate from the foreign tax authorities. There are no specific Slovak requirements for such certificate. Often the form used by the foreign tax authorities is non-negotiable and has to be used "as is". There are no fixed rules about the validity term of such document. Usually the certificate is viewed as valid for the period stated therein or for one taxable period (usually one year).

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

The treaty shopping as a principle is disapproved by OECD. Since most of DTTs are built on the OECD model, the treaty shopping is generally not encouraged in them. The DTTs, however, do not contain any explicit clause banning treaty shopping.

A few rules contained in the DTTs can work as a de facto anti-treaty shopping measure. The most important of them probably is the concept of a "beneficial owner" in the articles of DTTs relating to dividends, interest and royalties. Under this concept, only the beneficial (and not formal) owner is granted the beneficial DTT treatment. The term "beneficial owner", however, is not inherent to Slovak law and it is not defined in DTTs or in SITA.

Another rule working as an effective anti-treaty shopping measure is the rule about determining tax residence (mentioned above). By suppressing the formal criteria of residence and requiring a form of material link to the country of residence (such as the place of effective management for legal entities) DTTs are not so easily abused by treaty shopping practices

Question 10. Does the legislation of your country provide for specific legislation to prevent treaty shopping?

- specific limitation on benefit (LOB) rules;

Currently not in place.

- the general anti-avoidance rule (GAAR);

There is no explicit GAAR in Slovak tax law. However, the role of a general anti-avoidance rule is often performed by the substance-over-form rule incorporated in the Slovak Tax Procedure Act. Several other particular anti-avoidance rules can

also be found in SITA (fair market price rule, arm's length rule for affiliated dealing, etc.).

- an abuse of treaties principle;

Although the Slovak Republic does not have any explicit anti-treaty shopping measures, Slovak tax authorities recognize the term "abuse of tax treaty". This is regarded as undesirable behavior of taxpayers which the Slovak tax authorities in cooperation with the tax authorities of other countries try to eliminate.

It is a common practice of Slovak tax authorities to put the tax residence of companies under scrutiny, should there be a sign of intention of a company to obtain a tax advantage under a DTT that would not normally be available for this company.

- residency requirements; and/or

Slovak tax authorities accept the place of effective management as the factor of residence in the Slovak Republic for tax purposes. This factor generally prevails over the factor of registered seat.

- beneficial ownership requirements?

These are urrently not in place in SITA or under other Slovak laws, althoughay be used in connection with the taxation of dividends, interest and royalties under some DTTs.

Spain

Spain

Luis Alaix Climent
luis.alaix@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies the benefits of local tax legislation and/or double tax treaties?

Spanish legislation does not establish specific substance requirements in order to consider a company a tax payer in Spain. Therefore, it is not necessary that a company incorporated in Spain or a permanent establishment ("PE") in Spain of a non-resident entity reach a certain level of presence in the country to be considered as tax payers in Spain.

In principle, any company that (i) has been incorporated in Spain or (ii) has its address in Spain or (iii) has its place of effective management in Spain would be considered a tax resident in Spain and, thus, its income would be taxed in Spain on a worldwide basis.[23]

Likewise, Spanish legislation establishes that an entity resident in a tax haven might be considered tax resident in Spain if (i) its main assets consist of goods located or rights to be exercised in Spain or (ii) its main activity is carried out in Spain. This rule would not be of application if the entity proves that its place of effective management is located in its country of residence and that it was incorporated for sound economic reasons.

Spanish legislation also includes Controlled Foreign Corporation ("CFC") rules which, although they do not determine the attraction of tax residence to Spain, the do determine the taxation in Spain of certain income obtained by non-resident entities.

Regarding PEs, the Spanish Non-Residents Income Tax ("NRIT") Law, a non-resident company is deemed to operate in Spain by means of a PE, provided any one of the following circumstances is met: (i) the non-resident company has in Spain a fixed place of business through which the business of the company is wholly or partly carried on; or (ii) the non-resident company acts in Spain through a dependent agent, who is authorized to conclude contracts in the name and on behalf of the non-resident company, and habitually exercises such powers.

The "fixed place of business" concept included in the NRIT Law is more extensive than the one included in OECD Model (e.g. warehouses are considered to be a PE for NRT Law purposes).

Nevertheless, under Spanish tax legislation, double tax treaties override domestic law, and thus the relevant tax treaty must be taken into account where a treaty resident undertakes activities/services in Spain.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

Generally, when addressing whether an entity is resident or has a PE in Spain, the Spanish tax authorities/courts apply an extensive criterion, that is, they are usually prone to consider that an entity is resident or has a PE in Spain at the minimum evidence of presence in Spain.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies benefits of local tax legislation and/or double tax treaties?

It is not uncommon that, in a tax audit or in a tax review, the Spanish tax authorities use their right to request assistance from tax authorities from different jurisdictions to verify the level of substance.

It has to be pointed out that this request for assistance is not made on a prior basis, but when the tax audit or review is carried out. This means that tax payers apply those benefits that they consider of application without any initial verification by the Spanish tax authorities and, afterwards, the tax authorities might verify if the level of substance in the other country is sufficient to apply said benefits.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

- A local address or even real office space;

- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

This "presence" will normally exist when the residence of the company in the treaty country cannot be challenged, and when it may be deemed to be the "effective beneficiary" of the relevant income and not a mere intermediary unduly benefitting from the domestic or treaty protection.

As a general rule, a company is a resident for treaty purposes (has "presence") if it is effectively managed in the treaty country.

The place of effective management is not defined in the OECD Commentaries on the Model Convention and is also not clearly defined by Spanish law. The Commentaries simply regard as place of effective management the place where key management decisions are taken. Most of the rulings from the Spanish tax authorities set various criteria to determine where the place of management is. The rulings usually opt to set the place of management where board meetings take place, and/or where the board members reside, mainly because this is the clearest fact stated by the taxpayer when asking for a ruling. Consequently, the place where meetings are held and the residence of board members will be important to determine such place of effective management. Other criteria, such as where the day-to-day management takes place, will also be relevant.

Accordingly, from a practical point of view these basic guidelines should help preserve the residence of the company in the relevant country for Spanish domestic and treaty benefits, as well as the "substance" with respect to the income that it receives for treaty purposes:

- The majority of the Directors should be resident in the country of residence of the entity and the key management decisions should be taken in these countries. Evidence of this should be kept. If the majority of the Directors may not be resident in said country, the evidence related to the place where management decisions take place becomes a key issue.
- The ordinary management of the company, including tax filings, book-keeping, dealings with auditors, etc. should take place in the relevant country. In this regard, the Spanish tax authorities do not require that these activities are directly carried out by the company, allowing, therefore, to outsource them. There should be evidence that the Directors of the company periodically supervise this ordinary management and that this supervision takes place in the relevant country. Relevant contracts (supplies, etc.) should be signed in the relevant country
- The majority of the Directors should have sufficient professional experience and expertise to carry out their functions.
- There should be evidence that the company bears the risks of the activities carried out.

- To the extent possible, the company should have office space, telephone and fax lines and office equipment, staff employed and local bank accounts from which all relevant flows should be performed.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Spanish legislation does not establish any requirements in this regard. Notwithstanding, please see the answer to Question 4 for a further explanation of the practical approach of the Spanish tax authorities and courts.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

In general terms, Spanish tax authorities and courts take into consideration the effective place of management of a non-resident entity only in such cases in which there is a conflict of residence between Spain and the corresponding country. That is, the Spanish tax authorities and courts might attract the tax residence of a foreign entity to Spain if its effective place of management is located in Spain but, in principle, they might not analyze if the effective place of management is in a third country (i.e. they might not move the tax residence of an entity from one country to another different from Spain).[24]

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

In general terms, there are no specific requirements for the type of business activity to be performed in order to consider that an entity has "presence" or "substance" in a particular country. Notwithstanding, it is essential that companies have the appropriate human and material resources to carry out their actual activity. As an example, in case of holding entities, the appropriate organization of material and human resources for the management and control of the subsidiary are required.

Although it is not strictly talking a matter of "presence" or "substance", it has to be pointed out that in order to benefit from the participation exemption regime established in Spanish Corporate Tax Law, it is mandatory that the non-resident entity that distributes a dividend or that generates the capital gain carries out business activities outside Spain.[25]

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

The tax residence of a foreign company will be represented by a residency certificate issued by the country's tax authorities. This certificate is required in those cases in which the company applies the provisions of a double tax treaty or the benefits established in the local tax legislation for EU-resident entities.

If the application of a double tax treaty is intended, it is a necessary condition that the document expressly states that the company is resident in the country within the meaning of the double tax treaty signed between Spain and the foreign company's State of residence.

The validity term of such document is one year (or indefinite in case the taxpayer is a foreign State or any of its local entities).

Despite that the Spanish tax authorities expressly require that a residency certificate is provided by the tax payers to prove residency, in some cases, the Spanish case-law has accepted further evidence to prove the residency of a foreign country by any means allowed by national law.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

A significant number of double taxation treaties signed by Spain include the beneficial ownership clause to avoid treaty shopping.

Likewise, the rule of substance over form is generally applied by the Spanish tax authorities and courts in order to fight against treaty shopping.

Question 10. Does legislation of your country provide for specific legislation to prevent treaty shopping:

- specific limitation on benefit (LOB) rules;
- the general anti-avoidance rule (GAAR);
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

Spain does not have any specific legislation to prevent treaty shopping in addition to said clauses included in the corresponding treaties. Notwithstanding, Spanish tax authorities and courts generally require that any tax relevant issue (including international structures that might be set up by taxpayers) has to be based on sound business purposes. In absence of this, the Spanish tax authorities and courts might deny the application of the double tax treaty benefits.

Likewise, Spanish legislation includes an anti-avoidance rule ("conflict in the application of the tax rule") applicable to such cases in which the tax due is reduced or eliminated by means of artificial acts which have the only effect of reducing or avoiding said tax due. In these cases, the tax due would be determined by disregarding said artificial acts. Therefore, even though this rule is not specifically aimed at avoiding treaty shopping, it could be used for it.

Despite the above, it has to be pointed out that Spain has included specific anti-avoidance rules regarding the application of the Parent-Subsidiary and Royalties Directives when the majority of the voting rights of the EU parent entity are directly or indirectly held by individuals or entities that are not residents of the EU.

According to these specific anti-avoidance rules, when the majority of the voting rights of the EU parent entity are directly or indirectly held by individuals or entities that are not residents of the EU, the applicability of the exemption included in the Parent-Subsidiary Directive, as implemented by Spain, is subject to compliance with any of the following additional requirements: (a) the parent entity carries on a business activity directly related to the business activity of the subsidiary; or (b) the business purpose of the parent entity is the management of the subsidiary with the necessary organization of human and material means; or (c) the parent entity proves that it has been set up with a sound business purpose and not to benefit unfairly from the dividend withholding tax exemption. The application of Parent-Subsidiary Directive benefits in situations where the ultimate parent is not resident in the EU is an issue that is typically scrutinized by the tax audit, that follows a very narrow interpretation, and is therefore a matter giving rise to much controversy.

Likewise, in case the majority of the voting rights of the EU parent entity are directly or indirectly held by individuals or entities that are not residents of the EU, the application of the Royalties Directive requires that the parent company proves that it has been set up with a sound business purpose and not to benefit unfairly from the royalty withholding tax exemption.

[24]Please note that despite this, in cases where the beneficial owner is not located in the country of residence of the direct owner, the Spanish tax authorities might deny the application of the benefits of the treaty.

[25]This condition is generally deemed to be complied with when at least 85% of the gross income obtained by the foreign subsidiary (i) is not Spanish sourced, and (ii) does not correspond to any of the types of income potentially imputable in the taxable base of the Spanish entity under the Spanish CFC rules

Ukraine

Ukraine

Viktoriia Fomenko
viktoriia.fomenko@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefits of local tax legislation and/or double tax treaties?

The Ukrainian tax legislation operates only incorporation criterion to determine tax residency of a company. To benefit from Ukrainian tax legislation and/or double tax treaties to which Ukraine is a party ("DTTs") a company must be registered in Ukraine according to Ukrainian laws. This being said, foreign companies are always deemed non-resident taxpayers unless a foreign company has a permanent establishment in Ukraine.

Permanent establishments of foreign companies are subject to taxation in Ukraine in accordance with the general rules set force for Ukrainian taxpayers.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

The substance requirements with respect to foreign companies in Ukraine are applied in practice by Ukrainian tax authorities by way of determining whether a permanent establishment of a foreign company exists in Ukraine.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies benefits of local tax legislation and/or double tax treaties?

The administrative assistance between Ukrainian tax authorities and tax/fiscal authorities of foreign countries has been very rarely requested in practice up to the moment. However, we expect that exchange of information between Ukrainian tax authorities and tax/fiscal authorities of foreign countries will increase in the future taking into account that all newly signed DTTs contain specific provisions on exchange of information.

In order to be able to benefit from provisions of the DTT in question a foreign company would be required to provide to its Ukrainian contractor or daughter company a tax residency certificate, confirming that such foreign company is a tax resident paying taxes based on general rules in a country which has a relevant DTT with Ukraine. Usually Ukrainian legislation requires that such a tax residency certificate is formalized in a form prescribed by Ukrainian legislation (please see answer to Question 8 for more details).

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country:

- A local address or even real office space;
- Local bookkeeping and bank accounts;
- Local resident employees on the payroll;
- Minimum staff on the payroll;
- Possibility to outsource management, bookkeeping to third parties;
- Local board meetings?

Ukrainian law does not provide for any requirements as to level of presence of a foreign company in a foreign country. There is also no court practice with respect to this matter in Ukraine. However, since Ukraine started to apply "beneficial owner" criterion as precondition for application of the DTTs, we expect that Ukrainian tax authorities may start verifying level of presence of a foreign company in a foreign country in the nearest future.

Question 5.Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

No.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

No. However, since Ukraine started to apply "beneficial owner" criterion as a precondition for the application of the DTTs, we expect that Ukrainian

tax authorities may start verifying the level of presence of a foreign company in a foreign country in the nearest future.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in a foreign country in order to fulfill "presence" or "substance" criteria?

No.

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

In order to ensure the relief under the DTT for foreign tax residents, a Ukrainian tax resident must first obtain from a foreign tax resident its tax residence certificate issued by the relevant authorities of the non-resident's country of origin. If a tax residency certificate is issued in a form prescribed by the laws of the country, which is a party to the relevant DTT with Ukraine, such tax residency certificate must be properly legalized (apostilled) and translated into the Ukrainian language. Under Ukrainian tax legislation, a tax residency certificate is valid during the calendar year, in which it has been issued.

However, in case the resident of Ukraine repays an income to a non-resident in the current year but a tax residency certificate that was made available was issued for the previous year, the tax exemption still could be allowed, provided such non-resident would submit the tax residency certificate issued for the current year after the end of such year.

Question 9.Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Ukrainian tax legislation provides that the respective DTT applies only in case a recipient of income (dividends, interest, royalty, remuneration, etc.) is a beneficial owner of such income. Even if the recipient of income has rights to receive such income it would not be treated as beneficial owner in case such recipient of income is a nominee shareholder, agent or is an intermediate with respect to such income. Notably, most DTTs to which Ukraine is a party contain a condition with respect to beneficial owner but only with regard to dividends, interest and royalty.

Question 10. Does the legislation of your country provide for specific legislation to prevent treaty shopping:

- specific limitation on benefit (LOB) rules;
- the general anti-avoidance rule (GAAR);
- an abuse of treaties principle;
- residency requirements; and/or
- beneficial ownership requirements?

The Ukrainian tax legislation does not provide for specific legislation to prevent treaty shopping except for beneficial owner requirements (please see answer to Question 9 for more detail), transfer pricing and thin capitalization rules.

Recently, the Ukrainian courts started to apply "substance over form" principle to assess transactions deemed to be conducted without reasonable economic ground. Although there are several guidances from the Highest Administrative Court of Ukraine on how to assess whether there is reasonable economic substance in the transaction, such recommendations are not legally binding, and each particular case is assessed on its own merits. The Ukrainian courts are requested to check the documents confirming the transaction and verify whether such transaction really took place (e.g., the courts may ask for review documents confirming transportation of goods from the seller to the buyer and documents confirming further disposal of the goods by the buyer, etc.).

Although the "substance over form" principle is currently applied by the Ukrainian courts only with respect to domestic transactions, we expect that the Ukrainian tax authorities may take a closer look at international transactions as well.

United Kingdom

United Kingdom

Alex Thomas
alex.thomas@dentons.com

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies benefit of local tax legislation and/or double tax treaties?

A company resident in the UK for tax purposes is, prima facie, subject to UK corporation tax on its worldwide income and gains. However, a UK tax resident company can make an irrevocable election to exempt from UK corporation tax any profits (including chargeable gains) made by its overseas branches.

A company is resident in the UK for tax purposes if it is either:

a) incorporated in the UK; or

b) "centrally managed and controlled" in the UK" (see question 2 below for the meaning of this term in UK law).

A company not resident in the UK is chargeable to UK corporation tax only to the extent that it carries on a trade in the UK through a permanent establishment (PE). Broadly, such a company is chargeable only on the profits attributable to that PE.

Subject to anti-avoidance provisions (see questions 9 and 10 below), only companies which are resident in the UK, can claim benefits under the UK's double tax treaties. Most of the UK's treaties follow the OECD Model Tax Convention on Income and Capital (the OECD Model Tax Convention), which defines a resident of the UK as a person who is subject to tax there. However, there a number of variations to this definition. For example, the UK/Australia double tax treaty defines a resident of the UK as any person resident in the UK for the purposes of UK tax.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

The test of central management and control is one of fact, not law. Central management and control is not concerned with the day to day running of a company's business, but with the general policy and overall management control.

Central management and control is the authority exercised at the highest level of the company's business. Generally, it is the board of directors who exercise management and control of a company. However, there are exceptions to this general rule.

Central management and control will not be treated as exercised by the board of directors if the directors are perceived as "standing aside" from their directorial duties and merely implementing strategic management and general policy decisions made by others. This applies even when the day to day running of the company is handled locally. In these circumstances, central management and control will be treated as abiding with those actually exercising controlling authority.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies benefit of local tax legislation and/or double tax treaties?

This information is not publicly available.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?

UK tax residence

A company's tax status overseas is generally not relevant to the determination of UK residence. However, a company resident in the UK could potentially also be treated as resident in another country under that country's domestic laws.

Most of the UK's double tax treaties set out tests to be applied if a company is dual resident. These are sometimes referred to as "tie-breaker" clauses. These clauses determine where a company is treated as resident for the purposes of the treaty.

The "tie-breaker" clausethe OECD Model Tax Convention sets out that where a company is otherwise resident in both countries, it will be considered to be resident in the country where its place of "effective management" is located. (See question 6 below for further details.)

Not all treaties which the UK has concluded with other countries include a standard "tie-breaker"

clause. For example, in the double tax agreement that the UK has with the Netherlands, the US and Canada the competent authorities of the relevant countries will determine where a company is resident.

Permanent establishment
A non-UK resident company will have a permanent establishment in the United Kingdom if:

a) it has a "fixed place of business" in the United Kingdom through which its business is wholly or partly carried on; or

b) an agent acting on behalf of it has and habitually exercises in the United Kingdom authority to do business for it.

The UK definition of "permanent establishment", is based on, but is not identical to, the definition used in the OECD Model Tax Convention.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

There are no specific requirements in the UK tax laws as to type, nationality, residency and knowledge of the directors of a company.

The tax residence of individual directors is generally not relevant to the place of central management and control of a company. It is the place from which an individual exercises central management and control that is the relevant factor for determining the tax residence of a company rather than the country in which their personal tax liabilities arise. Nevertheless, for the purposes of international tax planning it is generally advised that the majority of a board of directors of a company should consist of individuals who are based in the country of intended residence.

Although not a legal requirement, it may be desirable for the purposes of international tax planning for the board to consist of directors who have specialist knowledge and expertise. It is sometimes the case that the board of directors of a company (and this is especially the case for "special purpose companies") consists of individuals who have no qualifications for the duties that they have assumed and are merely rubber stamping decisions made outside the board meeting. In such cases there is a risk that the UK tax authority may argue that the board is not functioning and that "central management and control" is exercised by some other person or body elsewhere.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

See answers to questions 1 and 2 above.

The OECD commentary on standard "tie-breaker" clause in the Model Tax Convention states that the "place of effective management" is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made".

The commentary goes on to state that the "place of effective management will ordinarily be the place where the most senior person or group of persons (for example a board of directors) makes its decisions, the place whether the actions to be taken by the entity as a whole are determined... An entity

may have more than one place of management, but it can have only one place of effective management at any one time".

The UK tax authorities have stated that effective management is normally located in the same country as central management and control. However, it is also recognised by the UK tax authority that effective management may, in some cases, be found at a place different from the place of central management and control. Where, for example, a company is run by executives based abroad but the final decision-making power lies with non-executive directors who meet in the UK, the place of effective management may be abroad but, depending on the precise powers of the non-executive directors, central management and control (and therefore residence for the purpose) would be in the UK.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfil "presence" or "substance" criteria?

There is no requirement in the UK as to types of business activities to be performed or not to be performed by a non-UK incorporated company for the purposes of determining tax residency.

A non-UK resident company will be subject to UK corporation if it carries on a trade in the UK through a permanent establishment.

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

There is generally no requirement for a residency certificate to confirm residency of a non-UK resident company.

In the UK a company must self-assess its residence status. This may result for example, in either (i) no corporation tax return being submitted to the UK tax authority on the basis that the company is not resident in the UK (and does not trade in the UK through a permanent establishment), or (i) a tax return being submitted by a non-UK incorporated company on the basis that it is UK tax resident.

Relief under a double tax treaty from UK tax on interest or royalties paid from a source in the UK is not automatic. An application form must be submitted to the UK tax authority together with supporting documents, which does not include a residency certificate. However, the completed forms will then be sent for certification by the tax authority of the non-UK resident company's country of residence. This certification provides evidence that the non-UK resident company is treated as being tax resident in that country.

Question 9. Assess how (if at all) treaty shopping is addressed in double tax treaties to which your country is a party?

The UK has sought to limit the use of its double taxation agreements by third country residents who have deliberately arranged their transactions in such a way as to obtain treaty benefits to which they would not otherwise be entitled through the following means:

Beneficial ownership: In order to benefit from a treaty, the recipient of income (such as dividends, royalties or interest) is commonly required to have "beneficial ownership" of that income. The UK has used this requirement as a tool to limit treaty benefit to those persons for whom were they were intended.

The definition of "beneficial ownership" has been considered by the UK courts in Indofood International Finance Ltd v JP Morgan Chase Bank NA [2006]. The court held in this case that the term "beneficial ownership" is to be given an international fiscal meaning not derived from the domestic laws of the contracting states. Under an "international fiscal meaning", beneficial ownership is to be determined by reference to a test which requires that the recipient enjoys the full privilege to directly benefit from the interest. It added that where recipients are bound in legal, commercial or practical terms to pass on the income, they will not be the beneficial owner of that income. The UK tax authority's view is that the "beneficial ownership" decision in Indofood, as far as it relates to double tax treaties, is now part of UK law.

The OECD has recently issued a public discussion draft of proposed changes to the dividends, royalties

and interest articles of the OECD Model Tax Convention to clarify the meaning of "beneficial ownership". The OECD stance is that the term should be understood in the treaty context and it is not intended to "refer to any technical meaning that it could have had under the domestic law of a specific country". The discussion draft also adopts the view that "beneficial ownership" refers to the full right to use and enjoy the dividend, interest or royalty without being contractually or otherwise required to pass it on to another person. This approach would seem to endorse the decision in Indofood.

Limitation of benefits article: The double tax treaties that the UK has entered into with the US and Japan both contact "Limitation on Benefits" articles. This article provides that, in order to benefit fully from the treaty, a taxpayer must both be resident of a contracting state and be a "qualified person". The list of "qualified persons" broadly includes persons who are considered to be low risk in terms of acting as a conduit for channeling income or gains to a person not resident in either contracting state (e.g. individuals, government, listed companies etc.). Treaty benefits may nevertheless be available to companies that are not qualified persons if other detailed conditions set out in the article are satisfied. Where a resident of a contracting state is neither a "qualified person" nor entitled to benefits with respect to an item of income, profit or gain under any other provision of the article, that resident may nevertheless be granted benefits under the treaty if the competent authority of the other contracting state determines that the establishment, acquisition or maintenance of such resident and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the treaty.

Bona fide provisions in specific articles: the interest and royalty articles in some of double tax treaties that the UK has entered into each contain a provision denying treaty relief under those articles where the debt or the royalty rights have been created or assigned in order to take advantage of the treaty article rather than for bona fide commercial reasons. Examples of double tax treaties which include such a provision is the UK/France and UK/Netherlands treaties.

Question 10: Does the legislation of your country provide for specific legislation to prevent treaty shopping?

There are a number of specific anti-avoidance provisions in UK law which may prevent a treaty from applying. The UK has also recently adopted a General Anti-Abuse Rule (GAAR) which may apply to "abusive" arrangements exploiting double tax treaty provisions.

However, there are no general treaty anti-avoidance rules in UK domestic legislation.

United States

United States

John Harrington
john.harrington@dentons.comm

The substance/residency requirements applied to a local presence of a foreign company

Question 1. Does your respective country require a certain level of "presence" (or substance) in the country before allowing companies the benefit of local tax legislation and/or double tax treaties?

Because the United States does not have offshore or ring-fenced regimes, there is generally no US tax incentive or benefit to a company to create a taxable presence in the United States. Having a taxable presence in the United States simply means that a foreign company will pay US tax at the graduated income tax rates that apply to US taxpayers, along with possibly the US "branch profits tax." Thus, a foreign company will "voluntarily" subject itself to US income tax only in rare occasions, such as when the foreign company would otherwise be subject to US withholding tax on gross payments and determines that being subject to US income tax on the net income would result in a lower US tax liability for the company.

The specific US taxation of a company depends on (1) whether the company is considered a resident for US tax purposes and (2) if it is a foreign company, whether it is engaged in US activities or receiving US-source income.

- If a company is treated as a US tax resident, then the company is subject to US income tax on its worldwide income, regardless of whether it conducts any activity in the United States. Generally, an entity incorporated in the United States (or an entity formed in the United States that is treated, or electing to be treated, as a corporation for US tax purposes) is a US person and is taxed on its income, regardless of where that income is earned. An entity that is formed in the United States but is treated as fiscally transparent for US tax purposes, such as a partnership, is not itself subject to US tax, but its owners are taxed on the income of the pass-through entity. Thus, owners of the pass-through entity that are US persons are subject to US income tax on income from the pass-through entity, regardless of where that income is earned.
- The US income taxation threshold for non-residents generally turns on whether they directly or indirectly (e.g., through ownership in a domestic or foreign pass-through entity) (1) conduct a trade or business in the United States or (2) if a US tax treaty is applicable, have a permanent establishment in the United States. Of course, even if a foreign company is not engaged in a US trade or business, it may be subject to US withholding tax on certain US-source income.

Question 2. How are substance requirements applied in practice by the local tax authorities and/or courts of your respective country?

Regarding residence, the United States is formalistic regarding corporations, with US taxation of worldwide income turning simply on whether the entity is incorporated in the United States. In addition, certain former US corporations remain subject to US income tax on their worldwide income, i.e., "expatriated" entities in which a US corporation undergoes a "corporate inversion" transaction so that it replaces the US parent of a worldwide affiliated group with a foreign parent of the worldwide affiliated group. In contrast, the determination of whether a foreign person is engaged in a US trade or business and therefore subject to US income tax on that US trade or business is very fact-specific. There is case law about the standard, but many of the cases are fairly old. The IRS will generally not provide a ruling as to whether a foreign company is engaged in a trade or business in the United States or whether income is effectively connected with a US trade or business. Nor will the IRS generally rule whether a foreign company has a permanent establishment in the United States or whether income is attributable to a US permanent establishment.

The substance requirements applied to a foreign company established in a foreign country

Question 3. Do the tax authorities of your respective country frequently use their right to request administrative assistance from tax authorities of different jurisdictions to confirm level of "presence" (or substance) in the other country before allowing companies benefit of local tax legislation and/or double tax treaties?

Generally, US tax authorities rely on self-certification and documentation by a foreign company that it is a

resident of a tax treaty partner and eligible for benefits of a US income tax treaty. The US tax authorities may contact tax authorities in a relevant jurisdiction if the US tax authorities challenge the foreign company's self-certification or documentation.

Question 4. What are the requirements of your country as to level of "presence" of a foreign company in a foreign country?

If a foreign company is not eligible for benefits of a US income tax treaty, the foreign company is subject to US income taxation to the extent that it has income effectively connected with the conduct of a trade or business in the United States ("ECI"). In that case, the foreign company's level of presence in another country is generally not relevant for US tax purposes. For a foreign company resident in a jurisdiction that has an income tax treaty with the United States, US tax treaties generally require the foreign company to have a substantive connection to the treaty jurisdiction (beyond merely being a tax resident) by meeting a limitation on benefits provision in the treaty to obtain the benefits (e.g., permanent establishment protection) of the tax treaty. Those few US income tax treaties without a limitation on benefits provision are being renegotiated to achieve such a provision. See the new US income tax treaties with Hungary and Poland.

Question 5. Are there any specific requirements as to type, nationality, residency and knowledge of the board members and/or directors of a company?

Because rules regarding formation of a company are at the US State, rather than national, level, the specific requirements depend on the US State where the company is formed.

Question 6. Does your respective country require that place of management is to be situated and/or decision making is to take place in the foreign country to satisfy a required level of "presence" (or substance)?

Under its domestic law, the United States looks only to place of incorporation, and not place of management and control, in determining whether a corporation is subject to US income tax as a resident.

Question 7. Are there any requirements as to types of business activities to be performed or not to be performed by a foreign company in foreign country in order to fulfill "presence" or "substance" criteria?

Generally, under case law, to be considered engaged in a US trade or business, the activities must be "continuous, regular, and substantial." Thus, in the absence of any other US activities, sales of products into the United States from outside the United States are not considered to be the conduct of a US trade or business and income from such sales is not ECI. In contrast, income from the performance of services in the United States generally constitutes ECI and therefore subjects a foreign company to US income tax. For certain activities, e.g., stock trading, there are safe harbors that a foreign company may rely upon to avoid being subject to US income tax on its activities. Absent the statutory safe harbors, there is a significant grey area as to the level of activity and specific activities that cause a foreign company to be subject to US income tax.

Question 8. Is residency certificate or other document required by your respective country to confirm residency of a foreign company? Are there any specific requirements to such document? What is the validity term of such document?

A foreign company seeking treaty benefits or asserting no US trade or business, generally must complete a Form W-8BEN if it is the beneficial owner of the income, along with any substantiation required by the Form W-8BEN (which depends on the specific benefit being claimed). A completed Form W-8BEN that includes a US taxpayer identification number is generally valid until there is a change in circumstances that makes any information on the form incorrect. If a foreign company lacks a US taxpayer identification number, its completed Form W-8BEN is generally valid for the calendar year in which the form is signed and the following three calendar years, until there is a change in circumstances that makes any information on the form incorrect. Depending on a foreign company's status and activities, the foreign company may have to provide a different type of Form W-8, e.g., a Form W-8ECI if it is engaged in a US trade or business or a Form W-8IMY if it is an intermediary or pass-through entity.

The forms and requirements described above may change

because the current forms and rules are being modified in light of the Foreign Account Tax Compliance Act, or FATCA.

Question 9. Assess how if at all treaty shopping is addressed in double tax treaties to which your country is a party?

Treaty shopping is generally addressed through comprehensive limitation on benefits articles in US tax treaties. The limitation on benefits article requires a foreign person seeking treaty benefits to be a tax resident of the treaty jurisdiction and to meet one of the specific tests in the article. The specific tests vary by treaty, but they generally permit tax treaty benefits to companies that are owned by individual residents of the treaty partner, publicly traded companies, companies that meet an ownership/base erosion standard, companies that meet an active conduct of business test, and companies that meet any of the other tests intended to show a substantive connection to the treaty partner.

Question 10: Does the legislation of your country provide for to prevent treaty shopping?

There are some statutory rules that limit use of treaty benefits, but the primary means of preventing treaty shopping is through limitation on benefit provisions in the tax treaties themselves.

Tax contacts

Almaty
Kanat Skakov, Partner
135 Abylai Khan Ave
Almaty, 050000
Kazakhstan
kanat.skakov@dentons.com
T +77272582380

Amsterdam
Rob Cornelisse, Partner
Roeskestraat 100,
1076 ED Amsterdam
The Netherlands
rob.cornelisse@loyensloeff.com
T +31 20 578 57 85

Baku
Ophelia Abdullayeva, Of Counsel
Hyatt International Center
Hyatt Tower 2
Baku 1065
Azerbaijan
ophelia.abdullayeva@dentons.com
T +994124907565

Berlin
Stephan Busch, Partner
Markgrafenstraße 33
D-10117 Berlin
Germany
stephan.busch@dentons.com
T +4930264730

Bratislava
Katarína Pecnová, Of Counsel
Námestie SNP 15
Bratislava, 81106
Slovakia
katarina.pecnova@dentons.com
T +4212206601113

Bucharest
Delia Dragomir, Managing Counsel
General C. Budisteanu 28-C
Bucharest, 010775
Romania
delia.dragomir@dentons.com
T +40213124950

Budapest
Tamás Tercsák, Managing Partner
Westend 'A' Tower, 5th Floor
Váci út 1-3, Budapest, 1062
Hungary
tamas.tercsak@dentons.com
T +3618806100

Calgary
Jehad Haymour, Partner
850 2nd Street SW
15th Floor, Calgary, Alberta T2P 0R8
Canada
jehad.haymour@dentons.com
T +1 403 268 7162

Chicago
Thomas Stephens, Partner
233 South Wacker Drive
Suite 7800
Chicago, IL 60606
United States
thomas.stephens@dentons.com
T +1 312 876 7485

Dallas
Todd Welty, Partner
2000 McKinney Avenue
Suite 1900
Dallas, TX 75201
United States
todd.welty@dentons.com
T +1 214 259 09533

Edmonton
Mark H. Woltersdorf, Partner
2900 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3V5
Canada
mark.woltersdorf@dentons.com
T +17804237100

Frankfurt
Michael Graf, Partner
Platz der Einheit 2
Gebäude Pollux
Frankfurt am Main, 60327
Germany
michael.graf@dentons.com
T +49 69 4500 12215

Kansas City
Bruce C. Davison, Partner
4520 Main Street
Suite 1100
Kansas City, MO 64111
United States
bruce.davison@dentons.com
T +1 816 460 2400

Kyiv
Igor Davidenko, Partner
49-A, Volodymyrska Street
Kyiv, 01001
Ukraine
igor.davydenko@dentons.com
T +380444944774

London
Alex Thomas, Partner
UKMEA Tax Head
One Fleet Place
EC4M 7WS London
United Kingdom
alex.thomas@dentons.com
T +442072421212

Madrid
Lourdes Perez-Luque, Partner
José Ortega y Gasset, 29
Madrid, 28006
Spain
lourdes.perezluque@dentons.com
T +34914363325

Montreal
Constantine A. Kyres, Partner
1 Place Ville-Marie
39th Floor, Montreal
Quebec H3B 4M7
Canada
constantine.kyres@dentons.com
T +1 514 878 8834

Moscow
Dzhangar Dzhalchinov, Partner
Balchug Plaza
Ul. Balchug, 7, Moscow, 115035
Russian Federation
dzhangar.dzhalchinov@dentons.com
T +7 495 644 0500

New York
Marc D. Teitelbaum, Partner
US Tax Head
Rockefeller Center, 620 Fifth Avenue
New York, NY 10020-1089
United States
marc.teitelbaum@dentons.com
T +12126325500

Paris
Sandra Hazan, Partner
Europe Tax Head
5 boulevard Malesherbes
Paris, 75008
France
sandra.hazan@dentons.com
T +33142684800

Prague
Petr Kotáb, Partner
Platnéřská 4
Prague 1, 110 00
Czech Republic
petr.kotab@dentons.com
T +420236082111

Toronto
Neil Bass, Partner
Canada Tax Head
77 King Street West
Suite 400, Toronto, Ontario M5K 0A1
Canada
neil.bass@dentons.com
T +14168634511

Vancouver
Joel A. Nitikman, Partner
250 Howe Street, 20th Floor
Vancouver, British Columbia V6C 3R8
Canada
joel.nitikman@dentons.com
T +16046874460

Warsaw
Karina Furga-Dąbrowska, Partner
CEE Tax Head
Rondo ONZ 1, 00-124 Poland
Warsaw
karina.furga-dabrowska@dentons.com
T +48222425252

Washington, DC
John Harrington, Partner
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005
United States
john.harrington@dentons.com
T +1 202 408 6352

Loyens&Loeff
www.loyensloeff.com

Dentons
www.dentons.com

CS26350-Vox Tax Report — 12/08/2013