



BARBADOS REVENUE AUTHORITY

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GUIDANCE NOTE

PPG No. 005/2020

Income Year 2020

Income Tax Act Cap. 73

Impact of Covid-19 on the Tax Residency Status of Companies

Introduction

The Barbados Revenue Authority (“the Authority”) has been actively monitoring the impact of COVID-19 pandemic on the tax residency status of companies in Barbados and as a result, the Authority believes that guidance should be issued to provide clarity as to the tax treatment status of companies for Income Year 2020.

The COVID-19 pandemic has forced many governments including the Government of Barbados to take unprecedented measures such as restricting travel (essential and non-essential) and implementing strict quarantine requirements in an attempt to deal with the global outbreak of the virus.

The Authority is also cognizant of the fact while many governments including the Government of Barbados have begun the process of reopening their borders to international travel, many individuals may be unable or unwilling to travel to Barbados to attend Board of Directors’ meetings because the threat of the virus remains a live issue. As a consequence, the Authority envisages that the following scenario may occur:

- 1) companies, which are normally considered to be tax resident in Barbados by virtue of maintaining central management and control in Barbados, may be unable to satisfy the legal criteria to be deemed a resident company for Income Year 2020 because the non-resident directors of companies are unable or unwilling to travel to Barbados.

In formulating this guidance, the Authority has reviewed the guidance from the Organization for Economic Co-operation and Development (OECD) titled “OECD Secretariat Analysis of Tax Treaties and the Impact of the Covid-19 Crisis” dated April 3, 2020.

Legislative Overview

The Authority is guided by the common law in determining the residence of a company in the absence of any statutory criteria for determining the same. The common law has generally

established that a company is resident in the country in which its central management and control is exercised. The Courts have rejected the place of incorporation as the sole test of residence of a company. While other factors such as the place where the principal business of the company is conducted, where the books and records are located, where the company seal is kept, where bank accounts are maintained and where the directors reside, have all been considered by the Courts as useful, they are not conclusive.

The true test for determining the residence of a company for the purposes of income tax is where the company's real business is carried on and the real business is carried on where the central management and control has been found to be exercised.

This is purely a question of fact. Simply put, a company's central management and control is found to be exercised in Barbados in an Income Year if the high-level/strategic decisions were made for and on behalf of the company by persons who, at the time of making those decisions, had a discernible presence in Barbados. Indeed, central management and control may be evidenced by minutes of Board of Directors meetings held in Barbados.

Tax Residency Status of Companies for Income Year 2020

In the scenario identified above, concerns may arise as to whether the place central management and control of a company has changed as a result of the inability of non-resident directors to be in Barbados to attend Board of Directors' meetings and therefore the company will not satisfy the legal criteria to be deemed resident.

While the Authority cannot provide definitive guidance as to whether the central management and control of the company has changed, the Authority will take a holistic view of the facts and circumstances of each case. Therefore, it is advised that both non-resident directors and companies maintain records of facts and circumstances of the COVID-19 related presence in Barbados, and outside of Barbados, to be made available to the Authority upon request. Indeed, it is understandable that the particular facts and circumstances for all directors and companies will not exactly be the same so it must be open to the Authority to review.

In keeping with the guidance issued by the OECD, the Authority is of the view that it is unlikely that the COVID-19 pandemic will result in any changes to a company's residency status for the

purposes of Income Tax Act simply because a few board meetings are held, or some decisions are taken, outside of Barbados for a short period of time.

According to the OECD's guidance, a temporary change in the location of the chief executive officers and other senior executives is an extraordinary and temporary situation due to the COVID-19 pandemic and such a change should not trigger a change in residency status of a company and the Authority will in these circumstances hold this view. Notwithstanding the guidance of the OECD and other jurisdictions, the potential change of circumstances may trigger an issue of dual residency. However, it is also the view of the Authority that any issues of dual residence can be resolved through the applicable double taxation agreements.

Policy & Planning
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