

C52 CORPORATE RESIDENCE INCLUDING ARRIVALS AND MIGRATIONS (sections 4, 5, 47G-H and 122)

Section 4 of the Law sets out that a company is treated as resident in Guernsey if it is controlled, or centrally managed and controlled, in Guernsey, or if it is incorporated in Guernsey and has not been granted exempt status.

Control, for the purposes of section 4, means control by

- a natural person or natural persons, who may be connected or unconnected with each other, and
- who, on their own, or jointly, control the company, as set out in section 122 of the Law.

“Control” is defined in section 122 of the Law as the power of a person to secure, by the holding of shares, being a loan creditor or in the possession of voting powers, that the affairs of the company are conducted in accordance with the wishes of that person.

The test of where a company is “centrally managed and controlled” was introduced in the Law with effect from 1 January 2019. This is a fact-based test (where UK case law is long established – notably in the case of *De Beers Consolidated Mines v Howe*) and is generally determined on the basis of:

- Whether the directors of the company do in fact exercise central management and control and
- If they do, where the directors actually exercise that control (which may not necessarily be the place where they meet – if, for example, during those meetings the directors merely “rubber stamp” proposals regarding the operation of the company made by someone else); or
- Exceptionally, where the directors appear not to exercise central management and control of the company, who does and where they do it from.

Despite the above, a company won’t be treated as resident in Guernsey for a year of charge, under section 4(2) of the Law, if it is proved to the satisfaction of the Revenue Service that:

- the company is, under the domestic laws of another territory (Territory A), tax resident in Territory A,
- the company’s business is centrally managed and controlled in Territory A,
- either
 - (i) the company is tax resident in Territory A under the domestic law of Territory A as a result of
 - (A) arrangements for double taxation entered into with Territory A and approved by Resolution of the States under section 172 of the Law, or
 - (B) the provisions of an international tax measure specified for the purposes of the Law by Resolution of the States under section 75CC(1C) of the Law made with Territory A, in which a tie breaker clause applies, or

- (ii) the highest rate of tax on a company in Territory A is at least 10%, and
- the company's tax resident status in Territory A is not motivated by the avoidance, reduction or deferral of the liability of any person to tax under the Law.

For the avoidance of doubt, that fact that a company is not treated as resident in Guernsey in a year of charge, as a result of the above, is without prejudice to the application, in respect of the company, of the other provisions of the Law or any Ordinance or Regulations made under it.

Clarification – regarding the application of other provisions of the Law, etc.

If a Guernsey incorporated company is determined as non-resident for tax purposes it will still be subject to the other provisions of the Law that apply to non-resident companies, such as sections 47G and 47H, and also to other sections that apply to all persons, (irrespective of whether they are resident or non-resident), such as section 76, relating to appeal rights.

Company becoming resident in Guernsey

A [form \(706\)](#) is available for a foreign incorporated company to complete if it needs to register with the Revenue Service because it is centrally managed and controlled in Guernsey. This form ensures that all the information needed is supplied. It should be submitted as soon as possible, following the determination that the company is resident in Guernsey, but at the latest by 14 July in the year following the first year the company becomes chargeable to Guernsey income tax, to avoid the risk of penalties for a failure to notify the Revenue Service of its chargeability.

Should the company require proof that it is considered resident in Guernsey for income tax purposes, a Certificate of Residence can be requested on the form. There is a charge of £25 for each Certificate issued.

Once registered the company will be sent a letter confirming its tax reference number, which it should ensure is included on any further correspondence with the Revenue Service.

Where a company is resident in Guernsey it is charged, and pays tax on income, in the same way as an individual who is solely or principally resident in Guernsey (with the rate of tax varying depending on the source of the income).

The company will be taxable on its income, for the calendar year in which it becomes resident, wherever the income arises or accrues, however the provisions of section 5(3) of the Law will apply to any overseas income, meaning that:

- any overseas income that started to be received after the date the company first became resident, will be taxed on the basis of the income received from the date of commencement to the end of the year of charge
- any overseas income the company received, prior to becoming resident in Guernsey, and it continued to have after the date it was considered to be resident, will be taxed on the same proportion of the income during the year of charge as the period

of residence in Guernsey (if the income represents a full period of 12 months, or the period that it held the source if it was less than 12 months)

- any overseas income it was receiving when it became resident in Guernsey and ceased to hold before the year end, will be taxed on the basis of the income that arose between the date the company became resident and the date the income ceased.

The company may also be in scope of the Economic Substance requirements and have other reporting obligations under various international tax measures, such as the Common Reporting Standard and Country by Country Reporting (more information about international tax measures can be found [here](#)).

Company migration/becoming non-resident

A company's residence may change during a year if it becomes centrally managed and controlled elsewhere, or it makes the decision to migrate to another jurisdiction.

If a company becomes centrally managed and controlled elsewhere it needs to complete [form 707](#), to confirm that it is not resident. If the company can confirm it meets the requirements of section 4(2) of the Law, it will not be treated as resident for the Year of Charge, meaning the company will only be subject to taxation under sections 47G-H on its Guernsey income.

It will be necessary for the company to provide proof, in the form of either a certificate or a letter from the jurisdiction where it is resident, confirming that it is resident in that jurisdiction for tax purposes.

The company has an obligation to inform the Revenue Service if its circumstances change, and it becomes resident in Guernsey again. Checks will also be made by the Revenue Service periodically to ensure the non-resident status is still appropriate.

If the company migrates it need to complete [form 708](#).

If a company can't confirm it meets the requirements of section 4(2) of the Law, the company will be charged to tax on any Guernsey income arising/accruing for the year, however, in respect of any overseas income the provisions of section 5(4) of the Law will apply, meaning that:

- any overseas income it had in the previous year and continued to hold on the date it became non-resident/migrated, will be subject to tax on the same proportion of that income in the year, as the period it was resident for the year of charge bears to a period of 12 months.
- any overseas income that it had at the start of the year of charge which ceased prior to the date it became non-resident/migrated, will be subject to tax on the income from that source in the year of charge
- any income that started after 1 January (in the year the company became non-resident/migrated), but before the date it became non-resident/migrated, will be

subject to tax on the income arising/accruing from that source in the year before the date it became non-resident/migrated.

Where a company has a non 31 December accounting year end and leaves Guernsey part way through an accounting period, the company will be assessed on:

- the accounting period ending in that year of charge; and
- the relevant proportion of the profits arising to the date the company became non-resident.

Example

Company Y becomes non-resident on 30 September 2021. Its accounting year end is 30 June. It will be assessed on the profits for the y/e 30 June 2021 and a proportion of its profits for the year end 30 June 2022, (i.e. the period from 1 July – 30 September).

If a company is migrating it will need a letter from the Director confirming that she has no objection, from a tax perspective, to the company being removed from the Guernsey Registry. The Director will review whether the company has met all of its obligations including under various international tax measures, (such as Economic Substance, the Common Reporting Standard and Country by Country Reporting) before it is confirmed that there are no objections from a tax perspective to the migration. This letter will need to be provided to the Guernsey Company Registrar with the application for migration. This letter will be issued on receipt of the completed form 708, so long as there are no outstanding issues.

Published 8.04.2015/7.02.2022