

C52 CORPORATE RESIDENCE (sections 4 and 122)

In accordance with section 4 of the Law, a company shall be treated as resident in Guernsey if it is controlled in Guernsey, or it is incorporated in Guernsey, and has not been granted exempt status.

The Director determines “control” for the purposes of section 4 as meaning 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 means of the holding of shares, being a loan creditor or the possession of voting powers, that the affairs of the company are conducted in accordance with the wishes of that person or persons.

Therefore an overseas subsidiary of a Guernsey company, which is controlled by non-resident individuals, would not be treated as tax resident in Guernsey (see example 2 below). As a non-resident company, the overseas subsidiary would have no obligation to file a tax return in Guernsey, unless it carries on business through a permanent establishment in Guernsey or has income arising or accruing in Guernsey (except distributions, interest and royalties).

An overseas company controlled by Guernsey resident individuals, however, is tax resident in Guernsey and hence chargeable with tax (see example 1 below).

Example 1

A BVI incorporated company has 5 unconnected individual shareholders, who each have a shareholding of 20%. If 3 of those shareholders are resident in Guernsey, then the company is deemed tax resident in Guernsey by virtue of shareholder control (as more than 50% of the voting powers are held in Guernsey) and hence chargeable to tax.

Example 2

A BVI incorporated company is a wholly owned subsidiary of a Guernsey incorporated company, which itself is owned by 5 unconnected individual shareholders, who each have a shareholding of 20%. Only 2 of those shareholders are resident in Guernsey, the remaining 3 are non-residents. The BVI incorporated company would not be tax resident in Guernsey, as it is not controlled by natural persons resident in Guernsey.

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