
Letters to the Editor

LETTERS TO THE EDITORS

Dear Sirs,

UK/Isle of Man Double Tax Arrangement

I refer to your article "Company Residence and the Jersey Treaty" contained in OTPR Volume 3, Issue 3.

The residence definition within the UK/Jersey double tax agreement is identical in terms to Article 2(1)(g) of the UK/Isle of Man double tax arrangement of 29th July 1955 (constitutionally not a "treaty" in the strict sense, since the Isle of Man is not a sovereign state).

I can confirm that the Inland Revenue interpret the Isle of Man arrangement in the same fashion as the Jersey treaty. It did occur to a number of people in the Isle of Man that there might be some scope for moving the central management and control of UK incorporated but otherwise non-resident companies to the Isle of Man after 15th March 1993, relying on the words after the semi-colon in the residence Article (which you refer to as "the Proviso"), and hereby enabling such companies to remain resident outside the UK.

The Inland Revenue challenged this interpretation of the residence Article, and I personally became involved in an exchange of correspondence with International Division in respect of one particular client. Ultimately, the tax issue at stake was resolved by other means, leaving the question of interpretation of residence Article still in contention. The Revenue view, as you state in your article in OTPR, is that the words contained within "the Proviso" do not override the words in (what you refer to as) "the Body"; rather, they provide "assistance in deciding whether, in applying the preceding words, a company is to be regarded as resident *in* a territory, since the opening clause clearly requires residence *in* one or other jurisdiction in order to decide whether a person is, for treaty purposes, a resident *of* either jurisdiction".

The Revenue correspondent then went on to say: "Two factors point to this interpretation as being correct. Firstly, as I have said, the second clause does not use the language of the first in referring to the thing being defined, nor does it surround it with inverted commas. It does not do because it is not supplying a definition, but elucidating words used in supplying it. Secondly, the clause begins with the word "and", to indicate that this is supplementary, not exceptional, to the preceding words. An Override [sic], as well as adopting the same language as the definition, would have commenced "but"."

I should also add that the Revenue interpretation of the Isle of Man residence Article is not shared (perhaps unsurprisingly) by the Assessor of Income Tax of the Isle of Man. It is in any event likely that the Assessor and the Inland Revenue will agree to a slight amendment of the residence definition, in the light of the Island's proposed international Business legislation, but I am unable to comment further on this at present.

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