



Faculty of Taxation

TAXREP 34/03

Place of effective management Suggestions for change to the OECD model tax convention

Memorandum submitted in September 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the OECD in response to the Consultation Paper issued on 27 May 2003

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INTRODUCTION

1. We welcome the opportunity to comment on the Consultation Paper issued by the OECD on 27 May 2003.

WHO WE ARE

2. The Institute is the largest accountancy body in Europe, with more than 123,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the Institute who pay an additional subscription.

GENERAL COMMENTS

5. We welcome the opportunity to comment on the proposal to refine the concept of 'place of effective management'

PLACE OF EFFECTIVE MANAGEMENT – EXPANDED COMMENTARY

6. We welcome the expansion of the Commentary as to how this phrase should be interpreted. We believe that this will in many cases assist in identifying a single place of effective management and hence residence.

HIERARCHY OF TESTS

7. We also welcome the introduction of a hierarchy of tests for those situations where even after the refinement of the concept of 'place of effective management' it will still be difficult to identify a single place of effective management.

Tax Representation

8. We have a slight preference for Option C 'the state in which the entity's senior executive decisions are primarily taken' as this is likely to give greater certainty. We do recognise that an entity's residence would change if senior management decisions are taken from a different country location but this would be as a result of a 'conscious' management decision.
9. Option A is the place where the entity's economic relations are closer and Option B is the place where the entity's business activities are primarily carried on. We do not believe that either of these tests should be the primary one as temporary fluctuations in the entity's business activities or markets could result in changes in the importance of one or other territory and hence the entity's residence could also fluctuate.
10. However we do believe that Options A and B would be appropriate second tier tie-breakers in circumstances where it is not possible to identify a single place of effective management under Option C.

IKY
15 September 2003