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'We do not consider that the mere physical acts of signing resolutions or documents suffice for actual management....What is needed is an effective decision as to whether or not the resolution should be passed and the documents signed or executed and such decisions require some minimum level of information. The decisions must at least to some extent be informed decisions. Merely going through the motions of passing or making resolutions and signing documents does not suffice.'

Special Commissioners in *Wood v Holden*

Central Management and Control and the Place of Effective Management - an update following the decision in *Laerstate BV v H M Revenue & Customs*

HM Revenue & Customs (HMRC) have achieved a significant win at the First Tier Tax Tribunal in the case of a company, *Laerstate BV*, which is incorporated in the Netherlands. HMRC had claimed that the company was resident in the UK for Corporation Tax purposes, by virtue of central management and control, and that the place of effective management (POEM) was also in the UK for the purposes of the tiebreaker clause in the Netherlands/UK Double Taxation Agreement.

Laerstate BV was the vehicle through which Mr Dieter Bock acquired a substantial shareholding in *Lonrho Plc* and the HMRC claim was for corporation tax on the capital gain made on the eventual sale of the shares together with Advance Corporation Tax due on the dividends paid by the Company. The tax at stake was very substantial.

On the central management and control issue the Tribunal found, following detailed analysis of the documentary evidence, that the Company was not managed through the Board meetings and that control was exercised by the sole shareholder mainly whilst he was in the UK. The documentary evidence was gathered from the company's Bankers, Lawyers and Brokers. Mr Bock spent

substantial amounts of time in the UK and had accommodation available to him so was UK resident himself.

The other Director was resident in the Netherlands and the occasional Board Meeting was held there but on the weight of evidence before it the Tribunal ruled that all the important decisions, as to the timing of transactions and strategy, were taken by Mr Bock and, more importantly, were invariably taken whilst he was in the UK.

In establishing company residence it is essential that it is clearly seen that the Company is being run by the Board at its meetings and equally essential, following this ruling, that the Board meetings are evidenced by means of comprehensive minutes which record all the decisions taken. The minutes should include confirmation of who attended the meetings and where the meeting was held.

It is often the case that one Director is a dominant Director, as in this case, either because of their shareholding or otherwise. Where this is the case it would be advisable that he acts within well defined guidelines and cannot commit the Board.

The case may well go to appeal but HM Revenue & Customs will no doubt be encouraged by this decision which may give rise to more enquiries from them into company residence.

If you have any questions or would like further advice then please do not hesitate to contact Steve Dumper on 01363 775365.



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