



HM Treasury

The inversion experience in the US and the UK

Mike Williams

Director Business and International Tax

HM Treasury, UK

International Tax Policy Forum

Washington DC, 23 January 2015

Structure

- Company residence in the UK
- Controlled foreign company rules
 - UK test for residence
 - “Central management and control”
 - Effective management
- Controlled foreign company rules
- Migrations from and into the UK

UK test for residence

- Traditionally based solely on place of “central management and control”, and blind to where a company was incorporated
- Expanded to cover incorporation in the UK from 1988
- Tax treaties generally break a tie over residence by looking at place of “effective management”

Memo: Ireland stuck with UK’s traditional approach, but is to align more closely with the UK from 1 January 2015, with grandfathering to 2020

“Central management and control”

- Case law test
- “A company resides ... where its real business is carried on ... and the real business is carried on where the central management and control actually abides” Lord Loreburn, de Beers case (5TC213)
- It is the highest level of control of the business which counts
- Highest level of control will generally be exercised by a company’s board of directors, provided those directors genuinely control the company

Effective management

- The tie-breaker in most of the UK's tax treaties
- “Where ... a person other than an individual is a resident of both [France and the UK], then it shall be deemed to be a resident only of the State in which its place of effective management is situated”: Article 4(3), France/UK double taxation agreement
- “The place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of effective management. An entity may have more than one place of management, but it can only have one place of effective management at any one time.”: Article 4(3), OECD Model Tax Convention

Controlled foreign company rules

Old CFC regime	New CFC regime
Worldwide basis of taxation	More territorial basis
Prevented diversion of UK profits to low tax jurisdictions	Prevents artificial diversion of UK profits to low tax jurisdictions
Focus on passive income	Focus on artificial diversion of passive income
Entity basis with exemptions	More proportionate entity basis with exemptions
Separate EU and non-EU regimes	One EU law compliant regime

Migrations from and into the UK

- WPP, United Business Media, Henderson Group, Shire, Informa, Regus, Charter and Brit Insurance all left the UK
- WPP, UBM, Henderson Group, Informa and Brit Insurance have all returned
- When an inversions project set up within HMRC was closed in 2011 it had tracked 15 migrations out of groups dealt with by its Large Business Service, and of 24 other groups
- Corporate tax reform
 - Stemmed the flow of outward migrations
 - Many of those groups that left the UK have since returned, but not all
 - Other groups have come to the UK (such as Aon)