

# Get it right first-time

I recently received a request from a client, who had set up a Cypriot holding company several years ago. This was long before the various initiatives to combat tax avoidance, anti-tax avoidance directives, exchange of information, substance requirements and so on.

In short, a Polish subsidiary paid dividends to the Cypriot company, and tax was withheld at source. The client claimed a refund from the Polish tax authorities who, in turn, came back and requested several clarifications regarding the substance of the Cypriot holding company. Among other things, they requested to be provided with the rental agreement for the office used to carry the company's business, and information regarding the number of staff employed and their respective roles.

More importantly, the Polish tax authorities requested explanations and supporting documentation confirming that the registered office address was not simply a 'mailbox' address. Apparently they had done their homework and were fully aware that the particular registered address was used by several other entities.

So, the client came to me with a simple question: **"How should I respond"?**

Stating the obvious, I informed him that based on the facts, there was really nothing that he could provide in response.

His next question was whether we can create substance in Cyprus and how (a bit late, don't you think?). We responded and offered our assistance with the creation of the needed substance.

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The client then sent me an affidavit that he had drafted, requesting that one of the Cypriot directors signs it. This affidavit made several confirmations to the Polish tax authorities, including the following:

- having a dedicated office and staff is not required for a pure holding company, and a simple majority of local directors suffices for management and control purposes

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- the company's registered office address is a real address and its activities are carried out from that address
- the local directors are actually exercising the effective management and control of the company.

It goes without saying that I respectfully declined. What followed was a long string of back-and-forth emails, where the client kept insisting (demanding basically) that we sign the affidavit, sighting that it was not a binding confirmation from our side, but rather simply a "statement of information" and for "guidance purposes". He was expecting that the provision of such a statement should be within the normal course of business, and should be provided as part of our services to him.

### Moral of the story?

Gone are the good ol' days when Cyprus companies were incorporated by the sack load, without giving sufficient thought to matters such as setting up adequate substance, management and control, CFC rules, exchange of information requests, etc.

"So, what's new?" That's what you are thinking, right?

Well, it worries me that I keep seeing a significant number of professionals and service

providers continuing to do exactly that. Carrying out their business in the same way that they used to do for several years, with a lack of long-term vision, with little consideration about the new realities of the international business landscape, and with disregard for the future consequences of their short-term actions (or inactions).

A structure should be thoroughly considered and thought through at the planning stage. It needs to be fit and proper so as to cater for the client's specific needs. All perceivable risks and pitfalls should be considered at the drawing table. Otherwise, trouble is bound to arise sooner or later, which may entail substantial costs and time to fix (or at least try to fix).

A tremendous effort has been underway in recent years to uphold and maintain Cyprus' reputation as a high-quality centre for international business and investment, and to clear any negative perceptions that may exist. Acting professionally in all business endeavors, planning at least five steps ahead, and always striving to serve the clients' needs and interests, needs to be at the cornerstone of this effort.

And in case you are wondering, we did not sign the affidavit, the client is still with us, and he is considering incorporating another Cypriot company. This time, I intend to personally ensure that we get it right first-time.

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