South Africa

Draft interpretation note on place of effective management published

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On 14 April 2015, the Revenue Service published a draft interpretation note (the draft) on the concept of place of effective management for public comment. The draft discusses the principles and guidelines to be applied for purposes of considering the definition of "resident" in section 1(1) of the Income Tax Act, with respect to companies.

The draft discusses the following issues/aspects in determining the place of effective management:

– meaning of place of effective management;
– key facts and circumstances;
– head office;
– delegation of authority;
– board;
– modernization and global travel;
– shareholders;
– operational management versus top level management;
– legal factors;
– economic nexus; and
– support functions.

The draft states that the principles and guidelines contained therein are consistent with the determination of the place of effective management when the term is used as a tie-breaker rule in a tax treaty that adheres to article 4 paragraph 3 of the condensed version of the OECD Income and Capital Model Convention and Commentary (2014).

Comments to the draft should be submitted to the Revenue Service by email to policycomments@sars.gov.za by no later than 31 July 2015.

Further developments on this matter will be reported subsequently.

See also

South Africa - Corporate Taxation - Country Surveys sections 1.2.1., 6.1.