

# MACFARLANES

## CENTRAL MANAGEMENT AND CONTROL - HEADLINE POINTS

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### PRIVATE CLIENT

This sheet provides a very basic, high level list of pointers designed to guide anyone wanting to ensure a non-UK incorporated company does not become UK tax resident. By virtue of its length, it can offer no more than a series of “dos and don’ts”, which may not comprehensively relate to every fact pattern or guard against every risk. We have a more detailed note setting out the legal background and advisable procedures, and would recommend that this note be used as no more than a tester of a doubtful position; if it gives rise to alarm bells, specific tailored advice should be sought, since the law in this field is very much fact-dependent.

#### DO NOT

1. Hold any board meetings in the UK.
2. Allow directors to consider or act on matters relating to the general, strategic policy of the company’s business or management while present in the UK.
3. Hold board meetings where a director joins by telephone or video conference from the UK.
4. Use written resolutions.
5. Have corporate directors (this tends to weaken the position by intimating that there is human non-director in control; at best it pushes the test back to the corporate directors).
6. Allow UK resident directors alone to form a quorum or pass resolutions.
7. Have UK resident directors whose influence would amount to a “guiding force”.
8. Allow key, strategic decisions to be taken outside formal board meetings.
9. Delegate board powers (beyond day to day affairs, but even then only under regular review).

#### DO

1. Have a majority of non-UK resident directors.
2. Ensure the directors have sufficient and appropriate knowledge, experience and expertise.
3. Hold regular board meetings where proposals are critically examined (i.e. no “rubber stamping”).
4. Take comprehensive, detailed minutes of each board meeting.
5. Prepare minutes of a meeting as quickly as possible, and ensure they are reviewed and signed (by someone outside the UK).
6. Hold all board meetings outside the UK.
7. Ensure any material contract is executed outside the UK.
8. Ensure the company is clearly resident in another jurisdiction: a suitable company office (and personnel) together with all accounting records, corporate records and significant original documents should be retained at the same location.

#### CONTACT DETAILS

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This note is intended to provide general information about some recent and anticipated developments which may be of interest.

It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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