

Company Incorporation - Economic Activity

Part Misc.10

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1. Introduction

A company incorporated in the State must have at least one director resident in the European Economic Area (EEA) (section 22(6) of the Companies Act 2014).

As an alternative to having a person as director who is resident in a Member State of the EEA, a company may instead put in place a bond to the value of €25,000 (section 137 of the 2014 Act).

The bond is to meet any penalty that might arise if the company fails to deliver certain information required under sections 882 or 884 of the Taxes Consolidation Act 1997, which refer to **Particulars to be supplied by new companies** or **Returns of profits**, respectively.

A bond is not required if the company holds an exemption certificate from the Registrar of Companies, stating that the company has a real and continuous link with one or more economic activities that are being carried on in the State (section 140 of that 2014 Act). The Registrar will only grant such a certificate on receipt of proof of such a link. A Statement from the Revenue Commissioners that they have reasonable grounds to believe that the company has such a link shall be deemed to be such proof.

2. Applications for Statements under section 140

An application for a Statement under section 140 should be addressed to:

Revenue Commissioners,
Companies Unit,
PO Box 1,
Wexford,
Co. Wexford

Or

Submit an enquiry via MyEnquiries in the category (Enquiry relates to)
'National Companies Unit (NCU)'

The application letter should include details of the nature and duration of the link and the nature of the economic activities being carried on in the State.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

3. Requirements for issue of a Statement

In most, if not all, instances Revenue will only be able to issue a Statement under section 140 on a post-event basis. The economic activity would need to be in train before Revenue could issue a Statement and it would be based on available evidence. An exception to this could arise, say, in the case of a proposed trading activity to be carried on by a company in circumstances where the Inspector was satisfied that agreement had been reached with a State enterprise or development agency in relation to the activities to be carried in the State.

Revenue will consider the extent to which a company has a **'a real and continuous link with an economic activity that is being carried on in the State'** where one or more of the conditions of section 140(9) are satisfied:

- (a) the affairs of the company are managed by one or more persons from a place of business established in the State and that person/those persons is/are authorised by the company to act on its behalf;
- (b) the company carries on a trade in the State;
- (c) the company is a subsidiary or a holding company of a company or other body corporate that satisfies either or both of the conditions specified in paragraphs (a) and (b); or
- (d) the company is a subsidiary of a company, another subsidiary of which satisfies either or both of the conditions specified in paragraphs (a) and (b).

Whether or not such a link exists is a question of fact to be determined in light of the facts and circumstances of each case.

The ordinary meaning of the words **"economic activity being carried on in the State"** comprehends some active participation in income generation and that test would not be satisfied by opening a deposit account, for example. Neither would Revenue regard a dormant Irish registered company holding but not exploiting assets as carrying on an economic activity in the State. In relation to holding companies, provided the companies' subsidiaries were carrying on economic activity in the State and there was evidence of a real and continuous link, the holding company would be able to receive a Revenue Statement for the Registrar. However, holding companies without such a link to economic activity being carried on in the State would not be in a position to qualify for such a Statement even if the company were liable to Irish tax on foreign source income.

Equally Revenue will look at each subsidiary of a holding company on its own merits, the fact that one of the subsidiaries of a holding company was carrying on an

economic activity would not suffice as a link to an economic activity on the part of its economically inactive fellow subsidiary.

In order to issue the Statement referred to in section 140, Revenue must have **'reasonable grounds to believe that the company has a real and continuous link...etc.'** This belief must be based on the available evidence. Evidence that is available to the Inspector in establishing whether or not a company **'has a real and continuous link...etc.'** is the frequency of submissions of tax returns. While the tax compliance of applicants will not be a feature in any test of economic activity, continuity of economic activity can be demonstrated by the regular submissions of tax returns over a reasonable period of time.

If the Inspector is not reasonably satisfied, then Revenue will not be in a position to issue a section 140 Statement.

Where a request is received in respect of a company which has an EU or EEA resident director; it is considered that the requirement for a certificate and therefore the Revenue Statement is not consistent with section 140(5), is superfluous and unnecessary. In those circumstances Revenue will not, in general, issue the requested Statement. Where there are specific circumstances arising in a company and there is uncertainty about whether a director is EU or EEA resident, such requests for a Revenue Statement will be considered on a case-by-case basis.

4. Notification to Registrar if a Statement is no longer valid

If Revenue becomes aware of information that a company has ceased to have a 'real and continuous link' then it is required to notify the Registrar in writing of the updated circumstances (sections 140(7) and 140(8) of the 2014 Act).