ForwardPoint

How to Access Double Tax Treaties as a Resident Company

Legal Insights for Structuring Cross-Border Operations Efficiently

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Overview

Double Tax Treaties (DTTs), also known as Double Taxation Agreements (DTAs), are bilateral agreements entered into between two countries to avoid taxation of the same income in both jurisdictions. For international businesses and high-net-worth individuals (HNWIs) operating through corporate structures, these treaties serve as crucial tools to mitigate tax leakage, ensure withholding tax relief, and provide legal certainty on taxing rights.

However, merely incorporating a company in a treaty jurisdiction is insufficient. To lawfully access the benefits of a DTT, the company must qualify as a "tax resident" in the relevant jurisdiction and meet substance and beneficial ownership tests.

Key Legal Requirements to Access a DTT

1. Tax Residency Certificate (TRC)

A Tax Residency Certificate, typically issued by the local tax authority (e.g., IRAS in Singapore, Revenue in Ireland, Cypriot Tax Department, etc.), is the official evidence that a company is tax resident in that jurisdiction. It is often the first document requested by foreign tax authorities when treaty benefits are claimed.

To obtain a TRC, the company must usually:

- Be incorporated or managed and controlled in the jurisdiction;
- Have a registered office and local bank account;
- File tax returns and financial statements;
- Pay corporate tax, even if nominal.

2. Place of Effective Management (POEM)

Most modern treaties follow the OECD Model Convention, which requires that the “place of effective management” be in the country claiming residency. This means:

- Strategic decisions must be made within the jurisdiction;
- Board meetings are held locally;
- Directors must either reside in the jurisdiction or fly in for meetings;
- Key documentation is maintained locally.

3. Economic Substance Requirements

Many jurisdictions (especially those formerly considered “offshore havens”) now enforce economic substance laws.

Jurisdictions like the UAE, Cayman Islands, Jersey, Guernsey, BVI, and Bermuda have adopted legislation mandating that certain relevant activities be conducted locally.

This typically means:

- Having qualified employees and operational expenditure locally;
- Maintaining physical premises;
- Conducting core income-generating activities (CIGAs) within the jurisdiction.

Failure to comply may result in:

- Loss of tax residency status;
- Ineligibility for DTT benefits;
- Financial penalties or exchange of information under CRS.

4. Beneficial Ownership and Anti-Avoidance Considerations

The use of nominee directors, layers of opaque ownership, or "mailbox" companies without genuine activity often triggers anti-abuse rules or Principal Purpose Tests (PPT) within newer DTAs.

To access treaty relief:

- The structure must have commercial rationale beyond tax savings;
- The beneficial owner must be a resident of the jurisdiction;
- There must be no conduit arrangements or treaty shopping practices.

Practical Steps We Assist With at FPS Financial Group

As structuring specialists, FPS Financial Group and our legal partners in key jurisdictions guide clients through the following:

- Jurisdiction selection based on treaty network (e.g., Ireland, Luxembourg, Cyprus, Netherlands);
- Company incorporation and local tax registration;
- Local director appointment and board support;
- Establishment of compliant local office, staff, and substance;
- Obtaining Tax Residency Certificates (TRCs);
- Ensuring annual compliance with local laws and treaty criteria;
- Legal opinions on treaty eligibility and beneficial ownership compliance.

Examples of Double Tax Treaty Benefits When Structured Correctly

Country of Incorporation	Treaty Partner	Dividends WHT (Reduced)	Interest WHT	Royalties WHT
Cyprus	India	10% → 5%	10% → 0%	10% → 0%
Ireland	UAE	20% → 0%	20% → 0%	20% → 0%
Singapore	UK	20% → 0%	20% → 0%	20% → 8%
Netherlands	Germany	25% → 5%	15% → 0%	15% → 0%

Conclusion

In today's global tax environment, claiming treaty benefits demands more than incorporation—it requires deliberate structuring, documented substance, and tax transparency. With growing scrutiny under BEPS, CRS, and anti-avoidance regimes, access to DTTs must be engineered and maintained legally and defensibly.

FPS Financial Group offers a turnkey legal and compliance-led approach, ensuring our clients benefit from international tax treaties without risk or compromise.