

UK Trading Companies as agent for an undisclosed principal

Whenever an offshore company purports to be acting as a trading company there is often a degree of disbelief that the activities are actually being undertaken in the BVI or elsewhere. This type of trade is simply not expected from that source. It therefore makes sense to arrange for the trade to be actually undertaken from onshore, and in this instance the UK.

The structure would therefore call for BVI, owned by an offshore trust, to act as principal in the transaction, but to appoint a UK company to act as its agent. If the UK company was acting as an agent for an undisclosed principal then the participation of the principal does not need to be directly disclosed to counter parties.

The Structure

It follows then that the agent in the UK will enter into transactions on instructions from the principal in the BVI. Such a relationship should be recorded in writing in an agency or representation agreement. The agreement should provide for a market related fee to be earned by the UK agent for the services so conducted. All trading transactions so conducted would take place in the UK.

The fee to be earned should be market related and commensurate with the responsibility and work performed. This fee will obviously be taxable in the UK.

The level of the fee obviously depends on discussion between the parties and on the level of work undertaken in the UK by the agent, but a fee typically in the range of 5% would be appropriate.

Tax Issues

All commercial receipts will be received in the UK by the UK agent, who will then remit to the agent the amount due to the principal. The UK agent will then be subject to UK corporation tax on its profit after expenses.

The BVI principal will only be subject to UK source income, provided care is taken that the principal does not carry on a trade in the UK, there should be no further UK tax.

To ensure that the company does not establish a branch in the UK, it is essential to do as much as possible outside of the UK, including the execution of the representation agreement, as well as the trading contracts. This ensures that both the agent and the principal can confirm that there is no UK source income.

Furthermore management and control of the two entities need to be independent in ownership and management and control.

Operation of UK company

To ensure that the UK company does not trade in the UK, the directors of the UK company should be non UK resident and the transactions entered into outside of the UK. Osiris can facilitate the conduct of these roles.

Although invoices are issued by the UK company , this is on instruction from the principal. Payments are then made into the UK.

VAT

It is likely that registration will be required as the UK company will have turnover above the required registration level of £73 000 per annum.

Obviously if supplies are made to customers outside of the EU, the supply will not attract VAT, inside of the EU the normal rules will apply.

Conclusion

The entering into of this arrangement allows for the use of UK trading agent without disclosing the existence of the principal. Please note that professional advice should be obtained before entering into the transaction.