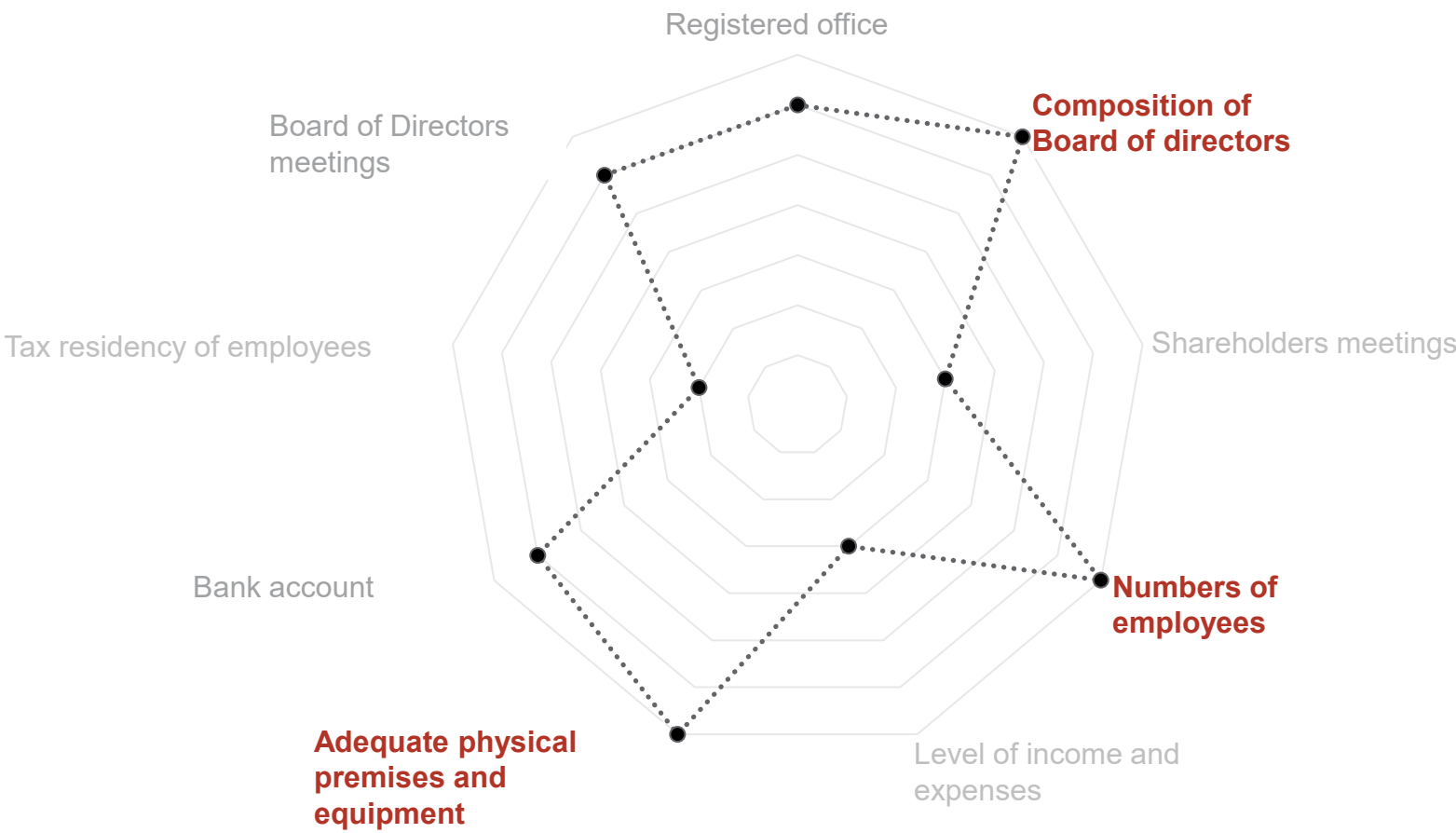


ALLEN & OVERY

Substance requirements:
an international
overview



Ranking of substance indicators in key jurisdictions



Key quotations from jurisdictions on local tax substance requirements



“Demonstrate that **decisions are taken by the entity in the Country of Residence** by persons who are competent to take such decisions.”



“Rather a **set of concordant elements** than a single indicator: objective and material criteria may be less relevant than the **assessment of an economic rationality** for holding companies.”



“If and to the extent decisions are taken in **Board of Directors meetings**, the location where such decisions are made may be relevant for German substance tax purposes.”



“Non-Italian entities can prove their substance by the **availability of a bank account** and **board of directors’ meetings** in their tax residency jurisdiction.”



“The **registered office** and the **place of central administration** of the company are located in Luxembourg. It is important to focus on the **composition of the board of directors** of a company in Luxembourg in an international and/or intra-group financing context.”



“The entity has **qualified staff** at its disposal that can adequately perform and record the transactions. The **number of employees should not be decisive**. The entity must incur wage costs as a remuneration for the activities in an amount that would be equivalent to at **least EUR 100,000**.”



“Having **managers in a different jurisdiction could be an issue** from a substance perspective; if a company is not considered as a beneficial owner, a look-through approach to the beneficial owner should be possible.”



“**Quality over quantity**: the company needs **adequate material and human resources**, not just a headcount. Employees should have clear **employment contracts** that spell out their weekly hours for the company.”



“The **recipient must be entitled to enjoy the full privilege to directly benefit from the income**. This can create difficulties where a lender passes on receipts pursuant to a back-to-back arrangement, even where the back-to-back payments take a different legal form (e.g., under a derivative or as a distribution).”



“US law says: incorporate here, pay taxes here. It doesn’t matter if you run your corporation from abroad or use an LLC or other entity that chooses to be taxed as a corporation. The **place of incorporation test** determines your **US federal net income tax liability**.”

Example of the risks triggered by a lack of substance



*Subject to the approval of the proposal for the ATAD 3 Directive, published on 22 December 2021.

Want to learn more about substance requirements and how tax authorities approach these issues?



Our team can help you:

- to avoid common pitfalls by helping you to develop operational guidelines
- to mitigate risk by sharing our top tips in this area



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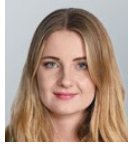
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