



Gibraltar Society of Accountants

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Tax Faculty - Newsletter 1/2013

Class 1A – Interest on Inter-company Loans and Advances

Date 12 August 2013

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During a meeting between members of the Tax Faculty of the Gibraltar Society of Accountants and the Commissioner of Income Tax and his senior management team, replies to various queries concerning the Income Tax (Amendment) Regulations 2013 (“the Amendment Regulations”) were as follows:

1. Can interest expense be offset against Class 1A interest income?

Yes, loan interest expense should be deductible against any Class 1A taxable loan income. The restriction under paragraph 15(3) of Schedule 3 to the Act does not apply to interest expended or incurred for the purposes of the production of income that is chargeable to tax in accordance with the Amendment Regulations.

2. What is meant by “registered in Gibraltar”? [as stated in the Amendment Regulations]

Registered in Gibraltar means registered at Companies House in Gibraltar, so this would include a Gibraltar branch registered at Companies House. Foreign companies not registered as a branch at Companies House would not be caught by Class 1A, even if the situs of the loan is in Gibraltar.

3. Are foreign partnerships with Gibraltar companies as partners treated as companies?

GSA to revert on this.

4. Will anti-avoidance legislation be applied to “deem” that there is, or should be, interest on loans, where no interest is charged?

No.

5. Is the £100,000 threshold pro-rated for periods shorter (or longer) than 12 months?

Yes.



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6. ***A.*** *Where the interest from an inter-company loan exceeds £100,000 from any one company (or in total from connected companies) can you confirm that it is the whole amount of the interest from that company (or companies) that is taxable, i.e., not just the part above the £100,000 threshold?*

Yes.

6. ***B.*** *If the company just referred to also has interest income of less than £100,000 from another company, which is unconnected to the lender or any of the other borrowers, would that be taxable under Class 1A?*

No; whether that is taxable or not would be determined separately.

7. ***Do the following constitute a loan or advance for the purposes of Class 1A income?***

a. *A deposit or other account held by a company with a bank, or similar financial institution?*

No.

b. *An account held by a company with a stockbroker, or a financial intermediary, or similar service provider, such balance arising in the normal course of business of the stockbroker, financial intermediary or similar service provider?*

No.

c. *Debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness, including bills of exchange and loans issued on a syndicated basis to unconnected companies, which are issued by a company, the shares or securities of which are quoted on a Recognised Stock Exchange (as designated for the purposes of the Act by Notice on the Gazette), or which are held for investment purposes?*

No.



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d. Preference shares held by a company?

No, as these would be regarded as shares, irrespective of the accounting classification, for the purposes of Class 1A income.

e. Participation in investment funds, especially Undertakings for Collective Investment in Transferable Securities?

Where the fund in question is not a company, for example, a Unit Trust, then any participation would not be an inter-company loan or advance.

Where the vehicle is a company, whether the participation constitutes a loan or advance would depend on the nature of the balance. If the fund is managed by an unconnected financial institution, for example, a bank, then the participation in the fund would not be regarded as a loan.

f. Balances due to an insurance company, or to a company that is part of a group whose main activity is that of insurance, from another group company where the balances are in respect of funds sent to that other company for the purposes of holding investments and bank deposits on a combined basis within a group (“pooled funds”).

The Amendment Regulations would apply to any interest-bearing loans in respect of the inter-company balances.

8. Would income from the following be treated as “interest” for the purposes of Class 1A income:

a. Profit participating loans

Any fixed element would be treated as interest, any variable amount that is profit share and is not interest would not be treated as interest but as a dividend.

b. Discount bonds

GSA to revert on this.
