



Gibraltar Society of Accountants

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Tax Faculty - Newsletter 2/2013

Update on various items

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A meeting was held between members of the Tax Faculty of the Gibraltar Society of Accountants and the Commissioner of Income Tax and his senior management team on 12th September 2013, to discuss various matters. The Commissioner's position on these matters was as follows:

1. Connected party payments

Any expenses paid to a connected party but which the Commissioner accepts are at arm's length and not caught by anti-avoidance will not be included in the aggregate amount capped at 5% of turnover. In order for the Commissioner to accept that a payment to a connected party is at arm's length, he will need to be convinced that the payment is in respect of a specific product or service and that the amount paid has been computed in accordance with OECD transfer pricing principles.

2. Apportionment of expenses between taxable and non-taxable income

Only expenses of a general nature need to be pro-rated. Expenses exclusively relating to one type of income (i.e., chargeable, or non-chargeable) can be fully deducted from that type of income only.

General expenses for the purposes of the above could be defined as being any expenses which cannot be specifically attributed either to chargeable or to non-chargeable activities. Expenses which are already treated as non-deductible would not be included in general expenses.

The Commissioner has suggested that the Tax Faculty puts forward some proposals to clarify what in its view would constitute general expenses. These in turn will be considered by his office, with a view to ensuring consistency in the tax treatment of expenses.

There has been some talk of a "de-minimus" level of non-chargeable income, below which no apportionment of general expenses would have to be made. However, this has not been agreed, or included in any draft legislation. No de-minimus level should be applied unless there is a change to that effect in the legislation, or we are advised otherwise by the Income Tax Office.



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3. *Expenses in relation to marketing and advertising will be fully deductible*

These are - in principal - fully deductible; there is always the “wholly and exclusively” argument to combat abuse. The Commissioner emphasised that sponsorships and similar expenditure are not deductible unless the sponsor is able to demonstrate that it is deriving a visible benefit from the transaction, which is commensurate with the amount of its expenditure incurred.

4. *Business entertaining*

Expenses in relation to reasonable business entertaining of potential and existing clients and business introducers will be fully deductible. There is always the “wholly and exclusively” argument to combat abuse.

The Commissioner has emphasised that for any entertaining expenses that are being claimed as a deduction he would expect to see sufficient and appropriate evidence that the expense is a genuine business expense, including documentary evidence and memorandums in respect of the specific purpose of the expense, the client or business introducer and the staff involved.

5. *Management charges between local connected companies*

Management charges between local connected companies will be subject to the same justification that is required for connected party payments where one of the connected parties is outside Gibraltar, except that the tax office will be using a test of reasonableness rather than expect local companies to prepare OECD transfer pricing analysis.

In all cases, the ITO will be looking to see that an underlying service is actually provided so that management charges cannot be used as a proxy for group relief which is not available.

6. *Payments of tax by bank transfer*

Where there has been a delay in the payment process of any payments of tax made by bank transfer, which results in the Income Tax Office receiving a payment after the due date, the payment will be deemed to be made on the date and time that the transfer was made, or, if earlier, when the instruction was received by the bank, provided this was before close of business for the bank on that day.

In either case, this would need to be proved. Proof would normally be a copy of the bank transfer receipt.

Any taxpayer paying by bank transfer is requested to complete a bank transfer payment form that can be downloaded from the ITO website.



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7. *Category 2 individuals*

Category 2 individuals that act as a director of a local company, are employed by a local company or provide services to a local company are not part of the PAYE system, do not have to be included in the company's P8 Form and are not required to pay social insurance contributions.

Taxpayers and/or their accountants should ensure, however, that this is made clear in the P8 reconciliation submitted with the corporate Tax Return.

8. *Proprietary trading in investments*

Proprietary trading in investments does not constitute a trade and therefore does not result in taxable profits. Any situation in which external client money is managed will mean that the activity is not regarded as proprietary trading and any resulting profits would be regarded as taxable.

9. *Withholding taxes*

Withholding taxes applied by a foreign jurisdictions on taxable income payable to a local taxpayer is available for unilateral relief from Gibraltar tax payable on that income (gross).

10. *Employees of foreign companies*

Where a Gibraltar business engages a foreign company to perform a service for it and that service requires employees of the foreign company to carry out part of their employment duties in Gibraltar on the premises of the Gibraltar business, then the Gibraltar business needs to ensure that those foreign company employees are registered in Gibraltar, and if not they then need to register those employees as detached workers under the Gibraltar business's own registration.

Failure to do so renders the Gibraltar business liable to a fine under employment legislation.

The foreign company is then liable to pay tax on the salaries of those employees earned in Gibraltar. This is a liability of the foreign company, not the Gibraltar business. However, once a detached worker is registered, the ITO will require the local business to either withhold 20% of the amount paid in respect of labour to the foreign company or require the employee to obtain a PAYE code and calculate and pay over PAYE from the foreign company employee's salary.



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11. Benefits in kind (“BIK”)

(a) Loans to directors are assessable as a BIK (Schedule 7 paragraph 35). As stated in the legislation, the taxable benefit is the amount of the loan. There is no mechanism in the legislation for recognising a repayment of a loan. Tax advisors need to advise their clients to be aware that the Income Tax Office is enforcing this.

(b) Medical insurance premium allowance has been increased to £2,000 (2012/13 -£1,500). The exemption in Rule 3(46) of the “ADE Rules” has also increased to £2,000 (although the published “ADE Rules” have not yet been changed to reflect this).

(c) The BIK figure used for calculating tax rate payable by a company on those BIK should not include exempt items (eg, medical insurance). Also, the £250 non-taxable threshold should only be applied against taxable benefits.

12. Income from chartering a Gibraltar registered ship/aircraft/yacht

Income from chartering a Gibraltar registered ship/aircraft/yacht is not accrued in or derived from Gibraltar just because it is registered in Gibraltar. However any income derived from chartering activities carried out within Gibraltar will be taxable.

13. Dividends

Dividends paid out of income that was not taxable on the company (including tax exempt) are not taxable in the hands of the shareholder receiving the dividend (although not stated in legislation, this principle was stated in the Pre-legislative briefing note).

Where companies have to submit a dividend return in respect of dividends paid through a group with various corporate layers, the Commissioner accepts that the standard Dividend Return does not cater for all relevant details to be included. The Commissioner has requested that persons submitting Dividend Returns should use the Returns to summarise the information, and submit supporting detailed workings in their own format for the Income Tax Office to check.

14. Trusts

(a) Refunds are payable to beneficiaries where the tax paid by the trust on the income distributed to the beneficiary in question is greater than the tax payable by the beneficiary.

(b) Properties owned by trusts or companies and used by beneficiaries/shareholders do represent a benefit in kind.

(c) The standard rate of tax is still 30%. ITA 2010 Section 13 states it is the standard rate of tax that applies to the taxable income of a trust, so that remains 30%.



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15. Branches

If an overseas company has some income from activities in Gibraltar, but has not registered a Gibraltar branch (eg, a UK trading company which owns and rents out a Gibraltar property), then it would still be considered to be a branch for tax filing purposes.

Under amendments to the ITA 2010 planned for later this year, a Gibraltar branch will be treated as if it were a company for tax filing purposes. Therefore, once the amended legislation applies, audited financial statements of a Gibraltar branch would need to be submitted if the turnover of the branch exceeds the £1m threshold.

16. Class 1A – discount bonds.

Income or gains from holding discounted bonds (i.e. from the difference between the amount paid for the bond when acquired by the holder and the subsequent value of the bond, or amount received or receivable from sale or redemption of the bond) is not classified as interest income, and therefore would not fall within the scope of Class 1A income under the ITA 2010.

17. Ensuring information held by ITO is up to date

The Commissioner has requested companies and their tax advisors to ensure that the Income Tax Office is informed when a company has ceased to trade and/or if it no longer has any employees and does not have to be registered for PAYE purposes. Likewise, when an employee has left, companies should ensure that the relevant forms are submitted to the Income Tax Office.

This should help to prevent penalty notices and surcharges being raised which then have to be appealed against.
