



# Gibraltar Society of Accountants

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## Tax Faculty - Newsletter 1/2014

### Clarification 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 26 February 2014, to discuss various matters. The Commissioner's position on these matters was as follows:

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#### **1. Property owned by a trust**

If a trust receives taxable income and uses this to purchase a property for the use of a beneficiary (who is ordinarily resident in Gibraltar), then that beneficiary derives a taxable benefit.

If, however:

- (a) an individual buys a property and settles it on the trust, or
- (b) the trust purchases a property from its capital, with the trust having no taxed or taxable income with which the purchase can be matched,

then the trust has no taxable income from the gift and accordingly the beneficiary cannot derive a benefit.

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#### **2. Property owned by a company**

A property owned by a company and used as accommodation by a director or his family represents prima-facie a taxable benefit in kind.

However, if the director, who is also a shareholder, gave or contributed for no consideration the property to the company, the company has not used income to purchase the property, nor incurs costs in respect of the property, then the use of that property by the director and/or his family would not constitute a taxable benefit in kind.

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### **3. *Filing and final payment deadline for companies***

There is a proposed change to the legislation to the effect that companies shall file their Tax Return (CT1) within nine months from the date on which the relevant accounting period ends. Similarly, the due date for final payment of any tax due is to be amended from six months to nine months from the date on which the relevant accounting period ends.

It is planned that this will apply to accounting periods ending on or after 1st July 2013.

The Commissioner has agreed that, pending the finalisation and enactment of the amendment to the legislation, the amended filing and payment deadlines as described above will be applied in practice in respect of accounting periods ending on or after 1st July 2013.

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### **4. *“Per diem” amounts paid to employees for subsistence***

If an employee pays an amount wholly, exclusively and necessarily in the course of employment and is reimbursed, then this does not constitute a benefit in kind (Income Tax Act 2010, Schedule 7, Chapter 2 paragraph 6).

It is common for employers in Gibraltar to reimburse employees for subsistence / out of pocket expenses when travelling and/or carrying out work duties outside of Gibraltar. Some employers may find it more convenient to agree a fixed daily amount to cover such expenses, rather than requiring employees to submit receipts for payment.

However, there is no specific provision in the Act, or any Regulations under the Act, defining any fixed amount as being accepted as a reasonable reimbursement of such expenses.

The Commissioner has agreed that he will accept the following as a reasonable reimbursement of subsistence and out of pocket expenses:

- For a period spent away from Gibraltar (and away from the employee’s residence, whether their main residence or otherwise) – up to £65.00 per day;
- The above excludes the cost of hotel accommodation. It also excludes the cost of travel and transport (for example, taxi fares, trains, etc).

Where a fixed daily amount is paid for subsistence / out of pocket expenses that does not exceed the amount calculated on the above basis, then the payment will not be taken as a benefit in kind and there is no need to include it on the P10/P10A Return.

Where a fixed amount is paid in excess of the above, and the expense is not supported by documentary evidence, the excess is to be treated a benefit in kind.

The above does not remove the right of the employer to reimburse expenses on the basis of the exact amount expended by the employee (whether greater or lower than the amount that would be implied by the above).

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