



Gibraltar Society of Accountants

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Tax Faculty – Newsletter 2/2015

Budget 2015 and Income Tax (Amendment) Act 2015 – clarification of various items

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A number of communications took place between members of the Tax Faculty of the Gibraltar Society of Accountants and the Commissioner of Income Tax and members of the senior management team at the Income Tax Office, following the 2015 Budget Speech and the publication of the Income Tax (Amendment) Act 2015. The Commissioner's position on various matters raised was as follows:

1 Filing of corporate tax returns – effective date of change in requirements

The Income Tax (Amendment) Act 2015 makes some amendments to Sections 29 and 30 of the Income Tax Act 2010. In particular, this extends the requirement for companies to file tax returns to all companies registered in Gibraltar, and includes changes to the requirements in respect of branches. The effective date of these amendments is shown in the Income Tax (Amendment) Act as "1 January 2016".

The Commissioner has confirmed that:

Section 3(5) of the Income Tax (Amendment) Act 2015 (which includes the reference to filing of returns for branches) will be applied to accounting periods commencing on or after 1 January 2016;

Section 3(5A) of the Income Tax (Amendment) Act 2015 (which includes the amendment to include a requirement for all companies registered in Gibraltar) – will be applied to accounting periods commencing on or after 1 January 2016.



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2 **Filing of accounts by companies with no assessable income**

The question of whether companies with no income assessable to tax will automatically be required to file accounts with their tax return is currently under consideration.

3 **Tax Amnesty**

The Chief Minister announced a Tax Amnesty in the 2015 Budget Speech, which is now referred to in the Income Tax Act 2010 (Sections 77 and 78). This refers specifically to the remittance to Gibraltar of money held outside Gibraltar (Section 77(1)).

Our queries regarding this are set out below, together with the responses in *italics*:

- (a) Is it possible to confirm that the amount payable of 5% of the “total amount remitted to Gibraltar” is the total amount payable including the tax settlement, as well as any penalties, interest and surcharges which may have arisen?

The amount payable of 5% includes penalties, interest and surcharges.

- (b) How would the amnesty work if there was no longer any “money held outside Gibraltar” – for example, money could have been spent or invested in share or property. Would the amnesty still be available to taxpayers who wish to come clean?

At the moment the amnesty applies only as stated in the legislation – i.e., money held outside Gibraltar.

- (c) Section 77(1) of the Income Tax Act 2015 states that:

Where money is remitted to Gibraltar which represents the product of income accrued and derived from Gibraltar, on the payment of the 5% penalty, no further tax will be liable on such monies.

There is no mention that the income must have been taxable and undeclared for any penalty to apply. We would assume that no penalty would apply where the income in question was either not taxable in Gibraltar in the first place, or, if taxable, has already been declared to the Commissioner of Income Tax, but for clarity would be grateful if you could confirm that is the case.

Confirmed



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3 Tax Amnesty (continued)

(d) Will any regulations, rules, guidance notes or practice notes be issued in respect of the amnesty?

Guidance notes will not be issued.

Additional comment by the Gibraltar Society of Accountants:

Professionals acting for clients should bear in mind their professional ethics requirements, as well as Section 67(1) of the Income Tax: "A person commits an offence if he is knowingly concerned in the fraudulent evasion of income tax by him or any other person". This may be particularly relevant in the case of a client seeking advice, who is considering availing themselves of the amnesty, but may decide not to do so.

4 Social insurance – secondary employment

The 2015 Budget Speech mentioned that employer's contributions in respect of an employee's secondary employment are to be abolished, if the full contribution is already paid in Gibraltar. When does this take effect?

Employer's contributions in respect of an employee's second employment whose full contribution has already been paid, are abolished from 1 July 2015.

5 Dividends

The amendments in Section 3(15) of the Income Tax (Amendment) Act 2015 relating to dividends come into operation on 1 January 2016. Does this date refer to the date returns are filed, dividends paid, or accounting periods?

The amendments are to be applied to accounting periods ending on or after 1 January 2016. Regulations and guidance notes are to be issued, to assist in the preparation of dividend returns.



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6 **Category 2 Individuals**

We await the report of the Category 2 Working Group. In the meantime, we note the changes made to the Qualifying (Category 2) Individuals Rules 2004 by the Income Tax (Amendment) Act 2015.

The amended Rules provide that “a Category 2 Individual who is permitted by the Finance Centre Director under rule 5 of these rules to carry on or exercise any trade, business, profession, vocation or employment in Gibraltar shall be assessable to taxation under the provisions of the Act in relation to income accrued in or derived from Gibraltar”.

- From discussions with your office we understand that the intention is that directors’ remuneration of a Cat 2 Individual from a company trading in Gibraltar and rental income from Gibraltar property would not be covered by the Category 2 capped amount, but that dividends received from a company trading in Gibraltar would be covered by the capped amount. Is it possible to confirm this?

That is correct in principle, though it depends on the ambit of the certificate issued by the Finance Centre Director. In the case of any doubt, the taxpayer, or their advisors should discuss with the Income Tax Office.

- As from what date would directors’ income and/or Gibraltar rental income become taxable (outside the tax shelter) on a Category 2 Individual?

From 1 July 2015 onwards.

7 **High Executives Possessing Specialist Skills (“HEPPS”)**

With reference to the changes made by the Income Tax (Amendment) Act 2015:

- Is it possible to confirm whether or not dividends received by a HEPSS individual from any company would continue to be included in his/her capped assessable income?

Dividends received by a HEPSS individual continue to be included in his/her capped assessable income.

- Would income accrued in or derived from outside Gibraltar still fall within the capped amount, or would it be taxable outside of that?

Income accrued in or derived from outside Gibraltar still falls within the capped amount



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8 Capital allowances for start-ups

This refers to the 2015 Budget announcement.

- Is it correct to assume that this applies to expenditure on or after 1 July 2015?

This applies to expenditure on or after 1 July 2015.

- Would expenditure be by reference to actual dates of expenditure, or on a pro-rata basis with reference to the accounts (where the accounting period does not end on 30 June 2015)?

This would apply to expenditure incurred after 1 July 2015.

9 Deduction for training costs

This was introduced by the 2015 Budget Speech.

- Is it possible to confirm that this applies to all companies (i.e., not just start-ups?)
- Is this restricted to companies, or to other businesses (for example, partnerships, sole traders)?

This applies to all companies and businesses.

10 Architects fees & planning costs credit and social insurance credit

These credits were introduced in the 2015 Budget Speech. Can you clarify which of these apply only to start-up and/or small companies?

- *The Architects fees and planning costs credit may be applied in respect of successful planning applications made in the first 24 months of operation of any new company. It does not just apply to small companies, but there is a £5,000 cap on the amount of the credit*
 - *The social insurance credit applies to those companies which have 20 employees or less in the first year of trading, and to those companies which have 10 employees or less in subsequent years of trading.*
 - *Neither will apply to restructures of existing businesses.*
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11 Other matters from the 2015 Budget Speech

We raised a number of questions relating to the following:

- Pre-notification mechanism for installation of kitchens, bathrooms and other fitted furniture
- Deduction for investment to reduce the EPC (Energy Performance Certificate) rating of premises
- Retirement Savings Bond

These are still under discussion.
