

Gibraltar Briefing

Keeping you up to date with recent developments

2011 – All change!

Gibraltar has entered a new era as an internationally competitive onshore European Finance Centre, having left behind its tax haven status. A great deal has been achieved over the last few years in putting Gibraltar on the financial map and improving the perception of the jurisdiction, with sector success in funds, insurance and gaming.

Gibraltar offers a competitive low tax rate within the EU, political independence and good sector links with the government via The Gibraltar Finance Centre Council.

In addition, Gibraltar offers regulatory supervision, investor protection and all service providers within the same jurisdiction.

With the new Tax Act for companies having been in place now for nearly six months, we will be looking at the

opportunities and pitfalls that the new Tax Act presents and what the future may hold for personal tax rates with the election looming later this year.

As a leading firm of accountants with a head office in London with some 50 partners and 350 staff, we are able to provide you with the advice and support you require. Whether you are already established in Gibraltar or are looking to make strategic investment decisions now is the time to contact us.



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Recap of corporate tax changes

From 1 January 2011, Gibraltar moved away from its discriminatory tax regime and introduced a corporate tax rate of 10%, to be self assessed.

The first payment on account date under the new regime, 28 February, has already passed.

Dividends, royalties and interest receivable are no longer taxed in Gibraltar, which has led to some interesting tax planning opportunities detailed below.

New tax planning opportunities

The new 10% corporate tax rate provides a very competitive tax rate within the EU. This, together with the fact that there is no tax on dividends, interest and royalties, no VAT and no capital gains tax makes Gibraltar a very favourable jurisdiction to do business in.

Location of activities

Although it is often said that Gibraltar has a "source based" system of tax, under the "accrued and derived" concept it is the location of the activities, not the source of the income that determines whether income is taxable in Gibraltar. The key therefore is where the activities actually take place.

Ensuring the activities are conducted outside of Gibraltar will remove the liability to Gibraltar tax.

For example, a Gibraltar company with a Chilean branch conducting mining operations in Chile will not accrue or

derive income from Gibraltar (as the mining activities are conducted in Chile). The administration and debt collection can be conducted in Gibraltar with no resulting tax liability in Gibraltar. A tax liability will arise in Chile on the branch activities at the applicable Chilean tax rate; however, the cash generated in the Gibraltar company may be invested with the resulting investment income being tax free.

A Gibraltar company may be set up to manage advertising services for an international group, with corresponding recharges to the other group companies. The sales force should be kept outside of Gibraltar and sales prices should not be negotiated in Gibraltar. The Gibraltar company could

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provide administrative, debt collection and bookkeeping services whereby none of the activities generate income in Gibraltar therefore not creating any taxable activity in Gibraltar.

A ruling can be applied for with the Gibraltar Tax Office in advance of setting up any proposed structure to seek confirmation that the proposed functions in Gibraltar will not create a liability to tax.

Gibraltar leasing company

The income from leased assets situated outside of Gibraltar is not deemed to accrue in Gibraltar and therefore the leasing income is not taxable in Gibraltar. The administration may be conducted in Gibraltar. However, it should be noted that the more staff employed in Gibraltar, the more likely the Tax Office is to query the arrangement. An advanced ruling may be sought as detailed above.

However, before such a structure is entered into, the tax consequences in the jurisdiction where the assets are located must be considered to assess the global tax efficiency.

For example, if the country where the assets are located levy a withholding tax on leasing payments to Gibraltar and/or the presence of the assets create a taxable permanent establishment in that other jurisdiction, the structure may not be globally tax efficient. Each case should be individually reviewed and advice sought accordingly.

Gibraltar property holding company

A Gibraltar company may be a tax efficient vehicle to own property, including property located in the UK. This would enable any future increase in the property value to be sold out of the Gibraltar property company tax free (there is no capital gains tax in Gibraltar).

A UK operating company could obtain tax relief at up to 26% on the rental paid to the Gibraltar property company. Under the UK transfer pricing regulations, the rental charge would be required to be an "arm's length price" (market price). The rental income received by the Gibraltar property company would be tax free in Gibraltar but UK tax would typically be required to be deducted by the UK operating company at 20% under the non-resident landlord scheme.

Gibraltar management company

A Gibraltar management company may be used in an international group whereby the management charge receivable is taxed at only 10% with a tax deduction being available in the paying company at the domestic tax rate (which could be up to c.35%).

For this planning to be effective, the management expenses would be required to be fully tax deductible in the paying country. The management fee charged would be required to be set at an "arm's length" price (in other words market rate) to comply with the paying country's transfer pricing regulations. This could be on a cost plus or other acceptable basis.

The Gibraltar management company would be required to have substance, including staff, and be centrally managed and controlled in Gibraltar.



Certain countries, including the Nordic Countries, France, Germany and Italy, charge a withholding tax on management charges paid to a Gibraltar company, which would be at the domestic rate of tax. In which case, using a Gibraltar management company structure may not be globally tax efficient. Each case should be individually reviewed and advice sought accordingly.

Gibraltar holding company dividend planning

A Gibraltar holding (or sub holding company) may be used to minimise the taxation on dividends in an international group structure. Gibraltar does not tax dividends received and can make use of the EU Parent Subsidiary Directive whereby no withholding tax is levied on dividends payable from certain EU subsidiaries.

Advice should be taken in advance of setting up an international group structure as certain EU countries do not acknowledge the EU Parent Subsidiary Directive applies with Gibraltar including France, Germany and Italy. In such cases it may be possible to impose for example a Luxembourg sub holding company.

The EU Parent Subsidiary Directive may not apply if the Gibraltar company is not considered to be the beneficial owner of the dividends.

Gibraltar finance company – tax free interest income

A Gibraltar finance company may be used in a European group whereby the interest receivable is tax free with a tax deduction being available in the interest paying European subsidiary at the domestic tax rate (which could be up to c.35%).

For this planning to be effective, the interest expense would be required to be fully tax deductible in the paying country, with no withholding tax being levied on the interest paid under the EU Interest & Royalty Directive which applies to certain EU countries paying interest to Gibraltar.

The interest charged would be required to be set at an "arm's length" price (in other words market rate) to comply with the paying country's transfer pricing regulations.

Gibraltar royalty company – tax free royalty income

This also relies on the EU Interest & Royalty Directive and is comparable to the Gibraltar finance company described above.

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Our services

Audit

Our business assurance services can make a difference to you. We can bring proven expertise and a wide range of experience of similar organisations to yours.

If you are a business, we can help you with reliable accounting services, with your accounting systems, or by providing external audit and corporate secretarial needs. Our Business Assurance Department has years of compliance experience and has centres of excellence for specialist assignments.

Outsourcing

In today's dynamic business environment, more and more organisations are seeking robust solutions for their accounting and related financial processes. Our outsourcing solutions will help you streamline your procedures, reduce the need for senior management input and avoid the high costs of implementing, maintaining and upgrading IT applications.

Tax

For many years, we have dedicated ourselves to ensuring that our business clients receive the best possible taxation advice from experts but at reasonable prices.

We have vast experience and pride ourselves in ensuring that you get personalised solutions, not an over-used off-the-shelf scheme that may not be appropriate for your needs.

We recognise that one size does not fit all when it comes to taxation issues. Therefore our team has dedicated specialists who can help companies of all sizes with issues including: Corporation Tax, International Tax, VAT, share valuations and succession issues.

Corporate Finance

CV Capital is the specialist Corporate Finance boutique of Chantrey Vellacott DFK. The main areas in which they specialise are corporate finance advisory including disposals, mergers & acquisitions, fund raising and specialist and market valuations as well as transaction support services including due diligence, financial modelling and exit route planning.

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