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Communiqué



The Trafalgar Spirit thrives

Welcome to a new edition of Communiqué – and my first. When asked to provide my introductory remarks, I had only been in post as Managing Director of Fiduciary for two days so that the selection of topics became one of my first challenges! However, all fell into place as I was privileged to witness, and join in with, Gibraltar's National Day celebrations on 10 September with everyone resplendent in red and white, being the colours of the National Flag. A little blue didn't go amiss either as we celebrated our status as a designated Overseas UK Territory. Gibraltar's motto is *Nulli expugnabilis hosti* ("No enemy shall expel us")

Despite the modern infrastructure and ongoing construction, everywhere you look you can see historical reminders of the great historical Battle of Trafalgar which took place just over 30 miles off the coastline and the Great Sieges which preceded it. (It is claimed that the body of Lord Nelson was brought to Gibraltar in a barrel of rum and that by the time the casket was opened there was no rum left in the barrel!).

The resolve of those times is evident today and this relatively small country has since continued to thrive and prosper.

Economics

With its special terms of EU membership, and standing at the crossroads of Europe and Africa, Gibraltar provides an extensive selection of products and services that meet the requirements of both local and international investors. As a modern, vibrant, low tax jurisdiction, it likewise has first rate professional infrastructure that is fully compliant with European standards of regulation. The numerous international trading entities and financial services companies, which already have a base in Gibraltar, are testament to this.

The economy has often been described as one that is 'running on all cylinders'. Its main economic growth attributers include general trade, the provision of financial services and communications (including e-gaming), tourism and maritime

activities. Whilst many countries struggle in these harsh economic times and as we possibly head into a double dip recession, Gibraltar continues to produce a budget surplus, whilst government borrowing was a very sustainable 23% of GDP last year. The Chief Minister has forecast that the economy will grow by 5% this year. How many other jurisdictions can claim such economic stability? So what are the principal drivers?

- **The Finance Centre** – Banks, trusts, insurance and reinsurance companies, high quality ancillary services such as accountancy and legal practices as well as communications and information technology providers have all made Gibraltar the first class international business hub that it is today.
- **Tourism** – Every year millions of visitors come to Gibraltar by air, land and sea.
- **E-Gaming & Maritime Services** – Two vibrant factors of the economy that have brought prosperity to Gibraltar. Vessel bunkering for instance remains a longstanding and prominent sector.

The prosperous economic performance of this unique European jurisdiction has been reflected in ways that benefit the whole community. These include greater recurrent public spending on essential public provisions such as health, education and social services. The Government attributes Gibraltar's successful development to its pursuit and implementation of policies that create and sustain a stable environment that promotes increased levels of business activity and investor confidence.

As a British Overseas Territory Gibraltar is a self-governing and self-financing parliamentary democracy within the European Union. It is a separate and distinct legal jurisdiction and its Parliament is solely responsible for the enactment of all domestic laws and for the transposition of European Union directives. As such, it enjoys passporting rights throughout the EU

Inheritance Tax Planning Opportunities for Non-UK Domiciled Taxpayers making a Significant Investment in the UK

These investments could comprise of residential or commercial property, an investment portfolio, substantial deposit in a UK bank account, except foreign currency accounts, which are exempt or investment in a business venture.

UK inheritance tax is charged on estates in excess of £325,000 at the rate of 40%.

There are basically two charging provisions. UK domiciled or deemed domiciled individuals are charged to UK IHT on their worldwide assets. Non UK domiciled individuals whilst not subject to IHT on worldwide assets are subject to the tax on assets situated and located in the United Kingdom.

This is where the use of an offshore company becomes essential tax planning for such individuals.

By investing through a company incorporated in a suitable jurisdiction, where there is no inheritance tax, instead of

investing directly as an individual, then the situs (location) of the asset is changed. The individual now owns shares in a company treated as located outside the UK rather than directly in the underlying asset. This removes the asset from the scope of the tax.

There are other benefits too. If the assets are owned through a non-UK company then there is no requirement to seek probate in the UK. This significantly strengthens the confidentiality of the succession. Probate may however be required in the country where the company is incorporated but would not be necessary if the shares were owned by a trust or foundation. Fiduciary is able to provide these structures and is happy to send further information about succession planning, trusts and foundations as well as companies on request.

Basis of Taxation of a Company Incorporated in Gibraltar

Accrued and derived basis

The primary basis of assessment to Gibraltar taxation is the taxation of income accrued and derived in Gibraltar, regardless of the residence of the recipient.

In deciding whether income is accrued in or derived in or from Gibraltar, the Gibraltar courts are bound by the Privy Council decision in Commissioners of Inland Revenue v Hang Seng Bank Limited [1990] STC 733 and the Commissioners of Inland Revenue v HK-TVB International Limited [1991] STC 723, and must look to where the activities take place which gives rise to the income.

Interpretation of the above

The above cases refer to decisions on taxation in Hong Kong which has a territorial basis of taxation and this is partly the route the new Gibraltar tax legislation has followed.

The key test is therefore where the activity takes place. There is no incorporation test or specific management and control test, although in many cases the latter may cause the income generated to be treated as arising in Gibraltar and will do so if the activity is a regulated activity or derived from a permanent establishment in Gibraltar. A mere registered office is insufficient to demonstrate a permanent establishment.

The legislation is intended to catch all locally trading companies but those which have activities not connected with Gibraltar fall out of charge to taxation.

In addition the location of a bank account in Gibraltar does not create a taxable presence and interest arising is specifically exempt from local taxation.

Withholding Tax

There is no withholding tax on the payment of a dividend from a Gibraltar company to a non-resident taxpayer.

Conclusion

As long as the company is not beneficially owned by a Gibraltar tax resident and has no activity in Gibraltar it is not subject to local taxation.



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Tax implications vary upon individuals' circumstances and individual tax advice should be sought.

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