



# Using Gibraltar for Efficient Tax Planning

Angela Smart



# Gibraltar



- Gibraltar is a peninsular of 3.6 square kilometres at the southern tip of Spain
- Approximate flying time London to Gibraltar – two hours twenty minutes
- Direct flights from British Airways, easyJet and Monarch airlines
- Approximately – one hour and thirty minutes from Malaga Airport



# Gibraltar Background



- Gibraltar is a British Crown Colony
- Gibraltar has a constitution which allows self government in domestic matters, while the UK retains responsibility for its defence, foreign affairs, financial security and internal security



# Regulation in Gibraltar



- Gibraltar's regulatory body is the Financial Services Commission (FSC)
- Gibraltar has adopted the EU Anti-Money Laundering Directives
- Details can be found at [www.fsc.gi](http://www.fsc.gi)



# Gibraltar and the EU



- Gibraltar is a member of the EU under Article 299(4) of the Treaty establishing the European Economic Community
- The treaty applies to European territories for whose external relations a Member State is responsible, as the UK is responsible for the external relations of Gibraltar therefore Gibraltar is in the EU



# EU Policies from which Gibraltar is excluded



- The Common Agricultural and Fisheries Policy does not apply
- Gibraltar is not in the Customs Union and VAT does not apply
- Gibraltar is a third country for the common customs tariff
- The European free movement of goods rules do not apply to Gibraltar
- The Schengen arrangements



# Why Gibraltar?



- Gibraltar is unique in comparison to all other offshore jurisdictions due to its status as an EU member
- Gibraltar does not have Capital Gains tax
- Gibraltar does not have Inheritance Tax



# Companies



- Exempt companies are currently being phased out in Gibraltar and by 2010 they will no longer exist
- The current rate of tax for companies in Gibraltar is 33%, this will reduce to 30% from 1st July 2008 and a further reduction to 27% from 1st July 2009. We have been guaranteed by 2010 this will be reduced to between 10 and 12%
- Income which is accrued and derived outside Gibraltar is not taxable in Gibraltar



# Background to Accrued and Derived



- Hang Seng (1990) STC 733
- HK-TVB (1992) STC723
- Barings Securities (2006)
- Hong Kong Cases – Colony
- Tax legislation in Gibraltar is almost identical to Hong Kong tax legislation



## Accrued and Derived cont...



- As Gibraltar is a colony the Privy Council is the final appeal court
- The Privy Council's decisions on the three cases, are binding on Gibraltar courts due to the identical wording in both colonies tax legislation
- Therefore from a legal point of view the accrued and derived principle is water tight



# The EU and Accrued and Derived



- An EU decision resulted in Gibraltar not being able to provide Exempt company status.
- The EU however cannot argue that Gibraltar cannot use the Accrued and Derived principle, as this would be discriminatory against Gibraltar as other EU state members use this principle
- Therefore from an EU perspective the Accrued and Derived principle is water tight

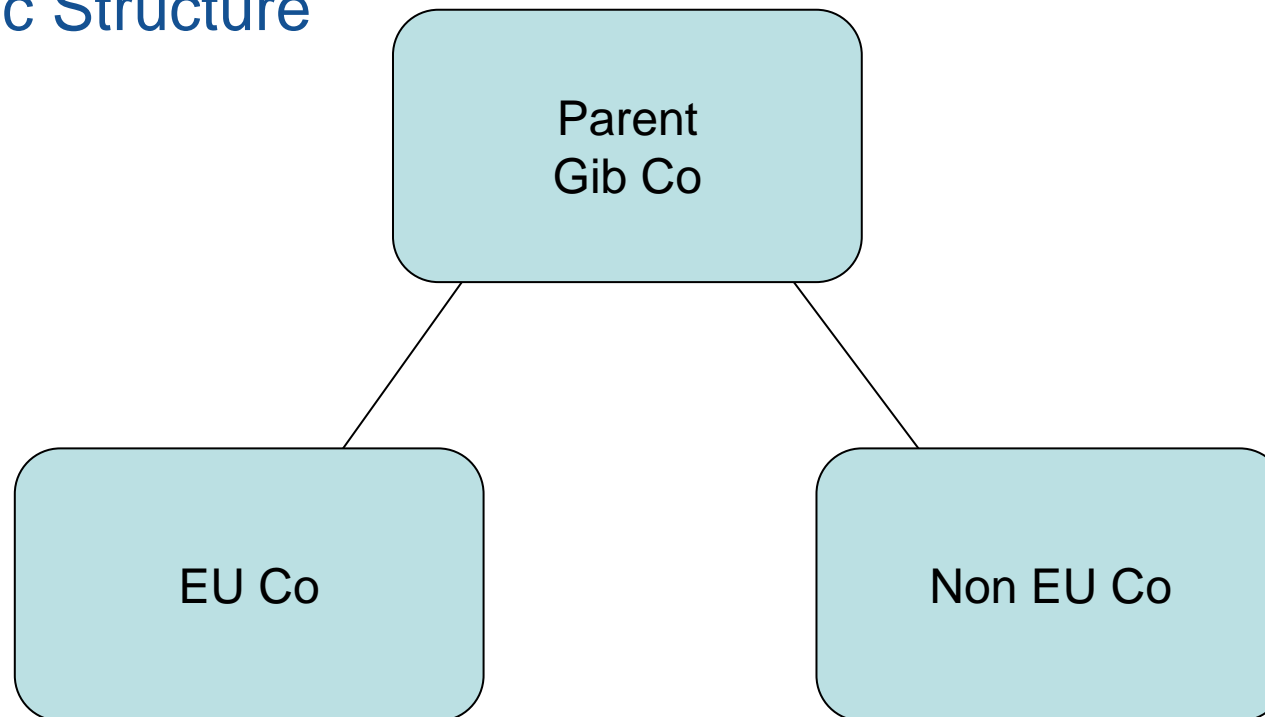


# EU Parent / Subsidiary Directive



- Gibraltar has adopted the EU Parent Subsidiary Directive
- This means that there is no withholding tax on dividends from an EU subsidiary to an EU parent, as long as the requirements of the directive are met
- This can be taken a step further to a group position as follows:

- Basic Structure





# EU Parent / Subsidiary Directive



## Example

- If you have a group of companies which has a Gibraltar Company as the parent and at least one company which is a relevant participation EU company (this could also be a Gibco) then the EU Parent Subsidiary Directive applies to all companies within the group.



# EU Parent / Subsidiary Directive



## Relevant participation :

- The parent must have a minimum 15% holding in the subsidiary this reduces to 10% in December 2008
- There is no withholding tax on dividends paid from a subsidiary to a parent
- A parent company shall not be subject to corporation or other taxation in respect of income from a relevant participation



# Savings Income



- In 2005 the government of Gibraltar introduced measures to exempt savings income from tax
- Interest paid by recognised banks (banks licensed in Gibraltar or their equivalent abroad): and
- Dividends or income from financial instruments paid by companies quoted on a recognised stock exchange
- These exemptions apply to individuals and companies, other than where receipt is a trading receipt



# Taxability of Interest in Gibraltar



- In establishing taxability of interest from non recognised companies in Gibraltar it is necessary to establish the situs of the loan, the test used is *Westminster Bank Executors & Trustee Company (Channel Islands) v National Bank of Greece and Athens SA* [1971] AC 945, HL,
- Where there were four relevant factors



# Taxability of Interest in Gibraltar



## Four factors

- Location of debtor
- Location of lender
- Location of security
- Location of the source of the money paying the interest
- If the balance of these four factors are outside of Gibraltar, then the loan will have its situs outside Gibraltar and the payment of interest will not give rise to liabilities in Gibraltar



# Summary of Gibraltar's Company Tax Friendly Position



- Accrued and derived outside Gibraltar means no tax liability on company's profits
- Adoption of Parent/Subsidiary directive means no withholding tax on dividends and no corporation tax on income received from subsidiaries
- Savings income is exempt from tax (providing conditions are met)
- No Capital Gains Tax



# Individuals



Gibraltar has many tax efficient options for individuals also:

- No Capital Gains Tax
- No Inheritance Tax
- A highly favourable tax scheme for High Net Worth Individuals



# Capital Gains Tax



- There is no Capital Gains Tax in Gibraltar, which makes Gibraltar a very attractive stop over point for individuals who wish to emigrate from the UK to another jurisdiction and do not plan to return to the UK within 5 complete tax years and do not wish to attract Capital Gains Tax in their new jurisdiction



# Example



- Mr X has a potential Capital Gains Tax liability of £1m, he is planning to move to Spain in the near future and has asked for advice on how avoid the £1m liability
- Mr X should leave the UK on 5th April 2008, he should come to Gibraltar, whilst in Gibraltar Mr X should dispose of his asset and realise the capital gain. He should move to Spain 1<sup>st</sup> January 2009
- By leaving the UK and entering Spain on the aforesaid dates, MrX will be able to avoid CGT in Spain and as long as he does not return to the UK within five complete tax years he will also avoid CGT in the UK.



# Example



- Mr X whilst in Gibraltar, can easily travel to Spain and look for suitable accommodation, he also can look at further tax planning with regard to Inheritance tax depending on various factors.



# Inheritance Tax



- **Does not exist!!**



# High Net Worth Individuals



- Unlike Switzerland, Gibraltar has a very simple, tax efficient scheme for High Net Worth Individuals
- The scheme can normally be up and running within two weeks
- Under these rules individuals in possession of a qualifying certificate are only liable to tax on the first £60,000 of assessable income.
- There is a minimum tax liability of £18,000, however the maximum tax liability would only be £20,000



# High Net Worth Individuals



## Qualifying conditions

- Net worth must be a minimum of £2m
- Approved residential accommodation must be available for the exclusive use of the applicant and his family. This can be purchased or rented
- An applicant can only apply for a qualifying certificate if they are not resident in Gibraltar and have not been resident in Gibraltar for the past five years.



# Income Tax and NI



- Gibraltar has two options in respect to Income Tax
- Gross based Scheme
- Allowance based Scheme
- Gibraltar still gives full mortgage interest relief and a first time buyers allowance
- Gibraltar also has very low National Insurance for both employers and employees



# Gibraltar



- Gibraltar has much to offer in the way of tax efficient planning for both companies and individuals
- Gibraltar can be used for structuring companies in an extremely tax efficient manner
- Gibraltar offers all the benefits of Mediterranean living in a tax efficient environment for individuals



# Contacts



Corporate tax and personal tax – Chris White  
[chris.white@hassans.gi](mailto:chris.white@hassans.gi)

High Net Worth Individuals – Javier Chincotta  
[javier.chincotta@hassans.gi](mailto:javier.chincotta@hassans.gi)

Financial institutions – Valerie Holliday  
[valerie.holliday@hassans.gi](mailto:valerie.holliday@hassans.gi)

Funds – James Lasry  
[james.lasry@hassans.gi](mailto:james.lasry@hassans.gi)

Insurance – Nigel Feetham  
[nigel.feetham@hassans.gi](mailto:nigel.feetham@hassans.gi)