

By Francis Carreras, Associate

Introduction

The Rock's attractions as a place to conduct international business or establish company structures have been enhanced in recent years by several developments – a warmer relationship with neighbouring Spain has been established and talks on closer cooperation at several levels continue; a new constitution is in place that, while retaining Gibraltar's ties with Britain, gives the Rock greater autonomy; and a glowing report by the International Monetary Fund (IMF) lauding the high standards of the jurisdiction's regulatory regime was issued at the end of May 2007.

Add to these factors the transposition in Gibraltar legislation of several important EU Directives – including the Parent/Subsidiary Directive and those relating to passporting of financial services – and the equation for safe and successful growth is strengthened.

The clouds of concern over the Rock's tax structure which have hovered on the economic horizon for several years were dispelled by the European Court in December 2008 when it ruled on the 'regionality' issue – that Gibraltar could legally impose a corporate tax structure which differed from that of Britain. There is however, a pending appeal.

IMF Report

Major aspects of Gibraltar's regulatory and legislative framework have been rated as among the best in the world by an independent evaluation team from the IMF. The results of the IMF's comprehensive review of the Rock's regulation of banking, insurance and anti-money laundering procedures echo similar findings in an earlier IMF report and those of the Financial Action Task Force.

The evaluations, which took into account the most recently revised standards in insurance and to combat money laundering/terrorist financing, underline the merited high reputation which Gibraltar enjoys as a well-regulated – but not over-regulated – jurisdiction in which, and with which, to do business.

The IMF evaluated the Rock's regulatory and legislative framework, requiring these to match international standards in the areas of banking, insurance and anti-money laundering/terrorist financing. The results put Gibraltar among the top table of jurisdictions – including a number of major onshore jurisdictions – in all three of the areas, among them the core principles of Basel II. The results on insurance and AML measures are particularly significant as these were measured against the recently revised standards of the International Association of Insurance Supervisors and the Financial Action Task Force respectively.

The report acknowledges the efforts of the Gibraltar financial services industry and the regulator to ensure that strong preventative and deterrent measures against the threats of money laundering and terrorist financing are effective. At the same time, the Gibraltar Government has adopted the 3rd Money Laundering Directive – these and other actions

ensure that the Rock's AML/CFT regime for the regulated financial services sector will continue to be at the forefront of international best practice.

Moving Investments Efficiently

Gibraltar's adoption of the EU's Parent/Subsidiary Directive has opened up attractive tax-efficient ways for international investors to capitalise on their receipt of dividends. The Directive provides for the flow of dividends from subsidiaries in the EU to their parent companies in the EU free of any withholding or other taxes. Thus a parent company registered in Gibraltar – where neither dividends nor capital gains are taxed – can receive funds from its subsidiaries and these can then be remitted or invested anywhere in the world. The directive offers a key – available only in EU territories – to the efficient management of investments in and out of Europe.

This access to the EU's Parent Subsidiary Directive, allowing dividends to come straight through, also gives Gibraltar the edge in the field of funds – a rapidly growing part of the jurisdiction's financial services sector. Gibraltar's fund industry has seen rapid and substantial growth since the introduction of the Financial Services (Experienced Investor Fund) Regulations 2005. One of the first funds established under the EIF legislation is a US\$1bn property fund that rivals many of those set up in other offshore jurisdictions and which has given a huge boost to the Rock's rapidly developing funds industry. As the global growth of hedge and other funds puts increasing pressure on the resources of the 'traditional' homes of funds with European links – the Cayman Islands, Dublin and Luxembourg – the Channel Islands have already seen substantial growth from the overflow, and Gibraltar is poised to take advantage of this.

Gibraltar's product is equivalent, and in some cases better than, most of the funds in other jurisdictions, while in some areas – such as property funds – the Rock enjoys a considerable advantage. Add to this the fact that it is quick and straightforward to obtain local tax rulings or any certification that is needed and the advantages are considerable.

Personal Tax Attractions

Gibraltar's benevolent and beneficial tax environment continues to attract wealthy individuals who want to enjoy the benefits of a Mediterranean living, and by availing themselves of the Qualifying (Category 2) Individual Rules 2004 – which were made under the Income Tax Act – such individuals may become residents of Gibraltar and in this connection may apply for a Qualifying Certificate.

By establishing their tax residence in Gibraltar, those with substantial assets and/or income can facilitate tax planning and usually can limit their tax liability in other jurisdictions on world-wide income.

Individuals with a Qualifying Certificate are liable to tax only on the first £70,000 of assessable income. Under the rates of tax currently enforced in Gibraltar, the maximum liability to tax for such individuals would be approximately £20,000 - £25,880 per annum. There is, however, a minimum tax of £20,000 per annum, payable irrespective of the individual's income in that year of assessment.

Under the sliding rates of tax imposed on an individual's assessable income, receipt in Gibraltar of an amount greater than £55,300 per annum would expose an individual to an amount of tax greater than the minimum sum of £20,000 per annum, but always subject to the maximum amount. However, only those not currently resident in Gibraltar and who have not been resident in any of the previous five years of assessment may apply for a Qualifying Certificate. Applications must be accompanied by two references (one of which must be from a bank) and a nonrefundable fee of £1,000, and to be accepted the applicant must have, for the exclusive use of himself and his family, approved residential accommodation in Gibraltar.

Although some beneficial Gibraltar tax structures are usually only available to non-residents, residents who have Qualifying Certificate status can make use of tax structures to help plan their fiscal affairs by using a Gibraltar company or a Gibraltar trust, neither of which (under certain conditions) are subject to taxation. These possibilities together with the fact that there is no capital gains tax, inheritance tax or estate duty in Gibraltar make the jurisdiction an attractive proposition to individuals able to meet the necessary criteria.

Passporting Arrangements

The right to passport financial services from Gibraltar into all other EU states has opened the door to a wide range of business and investment opportunities which particularly have been exploited by the insurance sector with a number of insurance companies effectively re-domiciling to Gibraltar to take advantage of cost and regulatory efficiencies as well as tax. Among these, protected cell insurance companies have proved particularly successful in recent years.

Gibraltar is uniquely placed to take advantage of this concept with enabling legislation in place and as it is an EU jurisdiction there are a range of opportunities here including effective low cost captive insurance.

Taxation

The rate of corporation tax is set at 22% for tax year commencing July 1, 2009. The Government of Gibraltar has announced that a low rate of corporation tax will be introduced for all companies. This rate will be 10% as of January 1, 2011. Energy and utility providers will pay a 10% surcharge and will suffer a rate of 20%.

With effect from July 1, 2009 a start up rate of 10% will apply to any company starting business in Gibraltar after July 1, 2009. The 10% rate will also be available for companies that commenced trading after July 1, 2007 subject to certain conditions being met.

The preceding year basis of assessment will be abolished as of January 1, 2011.

Income tax is payable upon the income accruing in, derived from, or received in, Gibraltar in respect of, inter alia:

- gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on;
- dividends, interest, discounts;
- any pension, charge or annuity; and
- rents, royalties, premiums and any other profits arising from property.

Tax is not, however, payable in respect of dividends, interest or discounts other than trading receipts as follows:

1. Dividends paid or payable by a company ordinarily resident in Gibraltar to a company.
2. Dividends paid or payable to a person who for the purposes of the Income Tax Act is neither ordinarily resident in Gibraltar nor a permitted individual.
3. Dividends paid or payable by a company whose shares are quoted on a recognised Stock Exchange.
4. Interest paid or payable by a bank, building society or other financial services institution licensed to take deposits under the Banking Act or equivalent legislation in any other jurisdiction.
5. Income from debentures issued by a company whose shares of which are quoted on a recognised Stock Exchange.
6. Income from loan stock or bonds issued by or on behalf of a government, a local or public authority.
7. Income from units in a collective investment scheme available to the general public, including shares in or securities of an open-ended investment company.

Income tax is charged on the taxable income of every ordinarily resident individual in accordance with a series of rates bands. The individual may opt to pay tax under any of the following two systems.

Gross Income Based System

Under this system individuals will be taxed on their gross income (no allowances or deductions can be claimed) as follows: Individuals whose gross income does not exceed £16,000 per annum:

- the first £10,000 of assessable income at the rate of 10%;
- up to £6,000 of assessable income at the rate of 20%. Individuals with gross income between £16,000 and £25,000 per annum:
- £16,000 to £17,000, the first £5,000 is taxed at the rate of 0% and the balance at 20%;
- £17,000 to £18,000, the first £4,000 is taxed at the rate of 0% and the balance at 20%;
- £18,000 to £19,000, the first £3,000 is taxed at the rate of 0% and the balance at 20%;
- £19,000 to £20,000, the first £2,000 is taxed at the rate of 0% and the balance at 20%;
- £20,000 to £25,000, the first £1,000 is taxed at the rate of 0% and the balance at 20%.

Individuals whose gross income exceeds £25,000 per annum:

- the first £25,000 of assessable income at the rate of 20%;
- the next £75,000 of assessable income at the rate of 29%;
- the remainder of assessable income at the rate of 35%.

Allowance Based System

Under this system individuals may claim allowances and deductions (e.g., if married with one child a spouse and child allowance) and will be taxed on the taxable income (gross income less allowances) as follows:

- the first £4,000 of assessable income at the rate of 17%;
- the next £16,000 of assessable income at the rate of 30%;
- the remainder of assessable income at the rate of 40%.

In the case of the individuals who are not ordinarily resident in Gibraltar, but work in Gibraltar, the rate bands shall be reduced by one-twelfth for each calendar month in the year of assessment during which that individual does not carry on or exercise business, trade, profession, vocation or employment in Gibraltar.

The rate bands are also reduced proportionality for periods of non-residence in the year of assessment.

In the case of those who are not resident in Gibraltar, the first £16,000 of taxable income will be at the rate of 30% and the remainder of taxable income will be at the rate of 40%.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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