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Introduction

Many jurisdictions now have in place a specialist "Holding Company Regime". At present Gibraltar does not distinguish between holding companies and companies for other purposes, but certain characteristics of the overall Gibraltar regime for companies make the jurisdiction particularly attractive.



In Europe

Gibraltar has a unique status in the European Union. It is a part of EU territory under arrangements entered into at the time of the United Kingdom's accession in 1973, but is outside the customs union and the common agricultural policy. This very particular status means that VAT is not applicable but all relevant corporate and fiscal EU directives and regulations apply to Gibraltar.

Most specifically a Gibraltar holding company is subject to the EU Parent-Subsidiary Directive as implemented in the Parent Subsidiary Rules 2008 ("the Rules"). The Directive was designed to facilitate the payment of dividends within groups of companies without these being subjected to taxation at several different levels.

The Directive provides that if a company of an EU Member State ("Company A") owns the prescribed percentage (10%) of another company in the EU ("Company B"), any dividends that Company A receives from Company B are received tax free. Gibraltar has given effect to the Directive and a group may be structured so as to allow dividends from both in EU and non-EU subsidiaries to be received tax free by a Gibraltar company in A's position. This coupled with the fact that Gibraltar does not impose a withholding tax on dividends out of Gibraltar makes Gibraltar an excellent entry point for an EU group with holdings in and outside Europe.

Gibraltar has also implemented the EU Directive on Interest and Royalties which provides that royalties or interest payments paid by Gibraltar companies to associated companies in EU member states will not be taxable in Gibraltar either at source or by assessment. It also allows the Gibraltar company to structure its operations in such a way that it can hold intellectual property whilst having a permanent establishment in another member state. Such an arrangement has the effect of allowing the receipt of royalties in Gibraltar without payment of tax



It is also worth noting that interest on loans, where the "situs" of the loan is outside Gibraltar, is not taxable in Gibraltar for a Gibraltar company.

Local Tax Rules

In addition to the advantages offered by Gibraltar as a result of its access to EU provisions on group and royalty payments, Gibraltar's general taxation model makes it an attractive place in which to establish holding companies.

Income Tax

At present Income Tax is charged on income which accrues and derives in Gibraltar at a rate of 22%. However, start up companies are subject only to 10% and the Gibraltar Government has indicated its intention to extend the 10% rate to the remainder of the economy by 1 January 2011. It is not envisaged that there will any change to Gibraltar's territorially based system of taxation.

Income Tax is not levied on interest paid on deposits held in recognised banks nor arising from dividends received from companies quoted on a recognised stock exchange. Similarly, there is no taxation in relation to income generated by any debt instrument issued by a company quoted on a recognised stock exchange. It will be evident therefore that a holding company can benefit from both arrangements that do not give rise to tax in respect of dividends received from its subsidiaries under the Parent Subsidiary Rules and in respect of income received from any bank deposit interest which might arise as a result of the holding of funds.

Capital Gains Tax

As there is no Capital Gains Tax in Gibraltar, profits which are derived from capital gains are not taxable in Gibraltar in the hands of a Gibraltar corporation.

Stamp Duty

There is no Stamp Duty on the transfer of shares in Gibraltar other than in respect of companies that own Gibraltar real estate.

Conclusion

As highlighted in this note, Gibraltar offers a number of important advantages which make it an attractive location in which to base a holding company structure with a group of underlying subsidiaries. With a strong and stable legal and regulatory framework, Gibraltar offers security, a favourable tax regime and a legal system based on the English Common Law. Hassans is the largest law firm in Gibraltar and benefits from specialist tax and commercial teams enjoying extensive experience in the establishing of holding company structures. Our clients include some of the world's largest and most successful quality businesses.

If what you have read in this fact sheet is of any interest to you please contact us on +350 200 79000, or by email to any of the contacts listed opposite.



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