Dr Rupa Huq MP and Philip Davies MP
Co-Chairs Financial Services Public Bill Committee
House of Commons
London
SW1A 0AA

(sent via email only)

26 November 2020

Dear Dr Huq and Mr Davies,

Thank you once again for the opportunity to give evidence to the Financial Services Public Bill Committee on Thursday 19 November. The ABI welcome the Bill and the Government's ambition for the future of financial services. During the evidence session there were questions on provisions in the Bill to maintain market access with Gibraltar, and potential tax incentives for firms to re-locate from the UK to Gibraltar. I committed to write to the committee with further details on the tax differences for firms operating in Gibraltar and the UK and have set out a summary below.

Brief overview of Gibraltar tax regime

Companies are tax resident in Gibraltar for corporate tax purposes if they are managed and controlled there and they are taxed on income from activities that is accrued in or derived from Gibraltar. The general rate of corporate income tax in Gibraltar is 10% (for telecommunications and some other industries the rate is 20%), with no time limit on carrying forward tax-losses. Gibraltar has a variety of anti-avoidance rules including regarding controlled foreign companies, hybrid mismatches and limitations on interest deductions. It also has a General Anti-Abuse Rule.

There is no corporate income tax for most companies on dividend income. For entities other than banks there is no tax on interest income from investments such as bank interest or corporate bonds. However, where interest income relates to loans or advances made by the Gibraltar company and is over a de minimis amount then tax is charged.

Gibraltar does not levy withholding taxes on interest or dividends paid and there is no tax levied on capital gains. There is also no domestic VAT system or Insurance Premium Tax in Gibraltar.

Gibraltarian insurance companies and UK business

There are a number of Gibraltarian insurance companies that write business with UK customers. The structure typically uses a UK based insurance broker which holds the customer relationship and the Gibraltarian insurer that takes the insurance risk. The broker can be within the same group of companies as the insurer or can be a third party.

Insurers will typically be subject to 10% corporate income tax on their trading income. Investment income is not however subject to tax, in-line with the treatment of other Gibraltarian companies.

For VAT, Gibraltar is a British Overseas Territory and part of the European Union, but under Article 28 of the 1971 UK Accession Treaty it is not part of the European Union VAT Area. Consequently, services supplied to Gibraltar are treated as though supplied to a non-EU jurisdiction for VAT purposes – that is, beneficial, as VAT on associated costs may be recovered. (Insurance services supplied to EU recipients will be treated in the same way after the Transition Period ends). This

uniquely favourable treatment has previously led to some structures where brokers in the UK provided administration services to Gibraltar underwriters in respect of UK insureds, with VAT treatment more beneficial than enjoyed by UK insurers. HMRC have, however, sought to prevent such disparity of treatment in recent years, including the use of new regulations to change the place of supply where UK insureds are involved.

Regarding Insurance Premium Tax, there is no IPT in Gibraltar. However, IPT liability relates to the location of risk, and so insurance underwritten by insurers established there may nonetheless be subject to IPT in the jurisdiction where the insured risk is located.

The UK broker is subject to 'normal' UK corporation tax on its profits.

UK technical and anti-avoidance considerations
There are tax complexities in operating cross border insurance business between UK and Gibraltar related parties (e.g. within a corporate group). Specific UK legislation that is in point and requires analysis includes:

- The profit subject to corporation tax in the UK entity(ies) needs to be calculated on an arm's length basis under transfer pricing / profit attribution tax rules.
- Where Gibraltar companies are subsidiaries of a UK company, then the controlled foreign companies rules can mean that profit that arises overseas is taxed within the UK entity. Rules are complex and exclusions arise where there is sufficient substance overseas.
- The UK's Diverted Profits Tax can apply to arrangements structured with tax motivations, for example where there is an economic mismatch.
- Where business is transferred from a UK company to a Gibraltar company, exit charges can apply to intangible assets such as renewal rights and customer lists.

In addition to the targeted legislation noted above, there is also the UK General Anti-Abuse Rule which could be relevant where arrangements are deemed abusive and are not covered by other legislation.

International changes
The OECD proposals over taxation of the digital economy are currently under consultation. Insurance business is proposed to be exempt from Pillar 1 Amount A (new taxing right) but is expected to be within scope of Pillar 2. Pillar 2 will apply a minimum rate of tax on corporate profits. The draft rules are exceptionally complex and application of these to any UK/Gibraltar insurance arrangements will be very dependent on individual fact patterns.

As I stated to the committee, the ABI does not currently envisage that firms are likely to relocate to Gibraltar as a result of the provisions in the Financial Services Bill. The Bill ensures a regulatory level playing field for access to the British market for Gibraltar based insurers, avoiding unnecessary disruption to the market. If any further information would be helpful for the committee please do not hesitate to contact us.

We look forward to continuing to work with Government and Parliament on the future of financial services as the Bill progresses.

Yours sincerely

Hugh Savill
ABI Director