

Tax Interest Group

Wednesday 26th October 2011

Aim of the Tax Interest Group

- An opportunity to discuss matters of tax principles and practice in a free and open environment
- To act as a networking group for tax professionals in Doha
- Suggestions for improvements to the structure and administration of the QFC tax regime

Areas for discussion

- Summary of tax regime so far
- Practical aspects of submitting a tax return
- Charter for QFC Taxpayers
- QFC Tax Department Practice Notes
- Local source income
- Transfer pricing
- Thin capitalisation
- Taxation of dividends
- Gains on sale of shares
- Taxation of bonds
- Summary & Questions

Summary of the QFC tax regime so far

- All tax returns now received for first taxable period ending 31 December 2010
- Penalties for late returns and interest on late paid tax have been raised in a number of cases
- Penalties for incorrect returns
- Issued 5 advance rulings and currently dealing with 2 further advance ruling requests
- 'Intention not to enquire' notices – several issued

Practical aspects

- Original signed tax declaration
- Accompanying documentation:
 - Financial statements (audited if required)
 - Service level agreements (SLAs) to support inter-entity charges
 - Transfer pricing policies, if relevant
 - Reconciliation of taxable profits to accounting profits
 - Explanation of how local source chargeable profits are arrived at
 - Consolidation
- Branch requirements – balance sheet
- Start of accounting period – commence activities within terms of licence
- Suggestions for next year?
 - Editable version of the QFC Tax Return
- Any other suggestions?

Charter for QFC Taxpayers

- The charter explains what can be expected from the QFC tax department as well as what the QFC tax department expects from taxpayers
- Taxpayer rights
 - Right to be informed, assisted and heard
 - Right to pay no more than the correct amount of tax
 - Right of appeal
 - Right to certainty
 - Right to privacy, confidentiality and secrecy
- Taxpayer obligations
 - Obligation to be honest
 - Obligation to be cooperative
 - Obligation to provide accurate information and documents on time
 - Obligation to keep records
 - Obligation to pay tax on time

Practice Notes

- First practice note issued in June 2011 – *Amortisation of Intangible Fixed Assets – Article 24*
- Proposed Practice Notes:
 - Thin Cap (more detail to come)
 - QFC Tax treatment of income from Sukuk
 - Group relief definition to include a branch
- In addition – Local Source Income Guidance
- Any suggestions for future practice notes?

Local source income

- QFC tax regulations provide that non-local source income is not subject to tax
- However, it similarly provides that expenditure relating to the generation of that income should be disallowed
- Allocation of over-heads
- The allocation to each source should be made on a '*just and reasonable*' basis
- Explanation/details of the basis used to allocate expenses between local and non-local activities will help us in our review

Transfer Pricing

- Part 8 of the QFC Tax Regulations
- Article 13 – attribute chargeable profits to a PE as if it were a distinct and separate entity
- Requirements to complete the Transfer Pricing section on the QFC Tax Return
- Advance rulings have been given with respect to cost-plus approach

Thin Capitalisation

- Consider the deductibility of interest payments for QFC tax purposes

Limited Liability Company – LLC

- Loan made between 2 Associated persons
- Persons are Associated with each other if one Controls the other, either directly or indirectly, or both are Controlled by the same Person or Persons.
- E.g. subsidiary QFC LLC and parent company
- Article 49 of the Tax Regulations covers transfer pricing and thin cap issues
- Issues to consider include:
 - the appropriate level of the borrowing person's overall indebtedness;
 - whether the loan would have been made at all if the Persons had not been Associated;
 - the amount which the loan would have been if the Persons had not been Associated;
 - the rate of interest and other terms which would have been agreed if the Persons had not been Associated

Thin Capitalisation

Branch

- Article 13 of the Tax Regulations:
 1. *The Chargeable Profits of a QFC Entity not Resident in Qatar shall be the amount of Chargeable Profits as are attributable to a Permanent Establishment in Qatar of the QFC Entity.*
 2. *The Chargeable Profits attributable under Article 13(1) to a Permanent Establishment shall be the same as the Chargeable Profits it would have made if it were a distinct and separate entity, undertaking the same or similar activities under the same or similar conditions, dealing wholly independently with the enterprise of which it is a Permanent Establishment.*
 3. *In attributing Chargeable Profits to a Permanent Establishment under Article 13(2) the Permanent Establishment shall be assumed to have the same credit rating as the enterprise of which it is a Permanent Establishment.*
 4. *In attributing Chargeable Profits to a Permanent Establishment under Article 13(2) there shall be attributed to the Permanent Establishment such equity and loan capital as appears to the Tax Department to be just and reasonable.*

- How to attribute chargeable profits to a PE?
- Many jurisdictions do not allow tax deduction for interest for branches
- What is 'just and reasonable' for the purposes of Article 13(4)?

Thin Capitalisation

OECD Guidance

- Organisation for Economic Cooperation and Development
- 2010 Report on the attribution of profits to permanent establishments
- Attribution of 'free' capital

QFC Policy

- Planning to issue a Practice Note
- QFC tax department will seek to follow OECD guidance on attribution of profits to a PE and thin capitalisation
- Debt to equity ratio in excess of 3:1 will generally be challenged
- We will generally not challenge ratio of 1:1
- Accept that Financial Institutions may have a higher debt:equity ratio than non-Financial Institutions

Taxation of Dividends

- Article 137 - dividends received from a Company listed on the Qatar Exchange are exempt from tax
- Article 73 – participation exemption, holding at least 10% of ordinary share capital for at least 6 months (do not have to be held for 6 months when the dividend is paid, just 6 months in total)
- Where holding < 10% the source of the dividend is the country of residence of the company paying the dividend:
 - Qatar resident company – dividend is taxable
 - Non-Qatar resident company – dividend is not taxable as it is non-local source income
- Position will differ if an entity is 'trading' in shares or securities – participation exemption may not be available

Gains on sale of shares

- No exemption for gains made on the sale of shares listed on the Qatar Exchange – exemption is only for dividends
- Article 72 – participation exemption, holding at least 10% of ordinary share capital for at least 6 months, any gains made are exempt and any losses disallowed
- Where holding < 10% - source of the gain will depend on where the shares are listed or registered.
- Will the position differ if an entity is 'trading' in shares/securities?

Taxation of Bonds

- View bonds as equivalent to loans
- Therefore for a Financial Institution the regulations in Article 10 will apply in determining source
 - Where is the loan initiated?
 - Where is the risk held?
- In view of the nature of most bonds it is likely that income will be taxable as local source income
- There is no exemption from tax in the QFC for income from bonds issued by the Government of Qatar

Any Questions?

- Any questions/comments/suggestions?
- Legislation changes?
- Feel free to contact the QFC Tax Department at tax@qfc.com.qa