

C53 FILING OBLIGATIONS FOR COMPANIES INCORPORATED OVERSEAS BUT CONTROLLED IN GUERNSEY (sections 62AB, 66A, 68, 122 and 189)

Introduction

Following the introduction of mandatory online filing for companies, clarification has been sought for when an income tax return should be filed by a company incorporated overseas but controlled, and hence tax resident, in Guernsey.

The statutory position, as set out in section 68 of the Law, requires every company issued with a notice, whether such notice is in the format of a return or by means of publication made in La Gazette Officielle, to deliver a return as to their income. Any company chargeable with tax, also has the obligation to notify the Director that they are so chargeable, if they have not received a notice by 30 June in any year of charge, and the Director may impose penalties, in accordance with section 189 of the Law, where a person fails to do so. A company is chargeable with tax if it is, for example:

- carrying on a business activity, such as a trade or professional activity,
- providing services,
- earning interest,
- managing investments,
- receiving any other income.

A company would not be chargeable with tax if it has not yet started to receive income, or has been formed to own an asset such as non-Guernsey land or intellectual property which is not producing income.

Filing obligations

This Statement of Practice sets out when an overseas incorporated, but Guernsey controlled and hence Guernsey tax resident company, is required to notify the Director that they are chargeable with tax, and submit an income tax return.

Returns should be submitted by 30 November following the end of the calendar year to which the return relates (i.e. the calendar year 2014 return should be submitted by 30 November 2015). If the return is not submitted within one year and fifteen days following the end of the relevant year (i.e. 15 January 2016 for calendar year 2014 return), a late filing penalty will be imposed, unless the company has been notified by the Director, in writing, that a return is not required, or the company meets the terms of the concessionary treatment set out in this Statement of Practice.

Further explanation

The Director recognises that there is a need to balance the information required to enable the correct tax to be assessed and collected, against the need to ensure that onerous administrative and compliance costs for companies do not arise.

For that reason, the Director, by concession, agrees that companies incorporated overseas, but controlled in Guernsey, will not be required to notify the Director that they are chargeable with tax, if they meet either A or B below AND they are not required to notify the Director under the Country by Country Reporting regime that they are a constituent entity (see www.gov.gg/cbcr for further information):

- A they do not carry on a trade and have no income from any source whatsoever. For clarification this does not include companies that own Guernsey property, who will still be required to register and submit a return; or
- B **All** of the company's income arises outside of Guernsey, and has been taxed at a numerically equivalent or higher rate of tax overseas than the company higher rate (20%) and the company had:
- no Guernsey employees,
 - no income from business carried on in Guernsey,
 - no qualifying loans to Guernsey resident participators (refer to section 66A),
 - not made a request under section 62AB(1)(a) of the Law.

If a company's circumstances change, such that they no longer meet the criteria above, the company should immediately notify the Director and file relevant returns.

Companies that have already notified the Director that they are chargeable with tax, which now wish to take advantage of this concession, should confirm, in writing, quoting their Guernsey tax reference number, that they meet the criteria to be removed from the requirement to complete a company tax return. If the company does not submit written confirmation, it will continue to be required to submit a company tax return annually. If a company is not currently filing company tax returns to the Director, and meets the criteria set out above and wishes to take advantage of the concession, there is no requirement for the company to confirm this in writing, nor to submit a company tax return annually.

This concession may be refused, or may be withdrawn, if it appears that the provisions of section 67 of the Law should be applied or if the Director otherwise believes that the non-notification of a company is outside the spirit of the concession.

Published: 08.04.15

Revised: 19.01.17