FSC Newsletter

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Financial Services Commission

Investment recommendations - the effect of tax-relief

Introduction

This newsletter is primarily aimed at firms that provide investment advice and recommendations to clients, which are based, or partly based, on the tax relief that may be available for certain investment or insurance type products. This includes firms that, for example, are permitted to provide investment advice in relation to the sale of life assurance-based products, and which therefore hold the relevant life assurance intermediary class of licence.

Background

As part of the tax changes introduced by the Government of Gibraltar during 2007, Gibraltar residents are now able to choose between two income tax systems under which they can be assessed. The first of these is the system that has existed historically and under which certain allowances can reduce the amount of tax payable – this is colloquially referred to as "tax-relief". The second, and newer system, is gross income-based, operates on the basis of set rates and under which no allowances are available.

As part of the FSC's risk assessment programme, on-site visits continue to be carried out in order to evaluate firms' compliance with the various requirements and obligations set out in the relevant Acts, Regulations, Guidance Notes, Codes of Practice and Newsletters. The results of a number of on-sites have indicated that the manner in which investment recommendations have been made (specifically where the potential tax-relief of certain investment or insurance-based products has been highlighted to a client) has not always properly taken into account the different tax systems that are now available.

This newsletter therefore sets out the FSC's expectations in this regard.

Investment Recommendations

Where a firm makes an investment recommendation or provides investment advice to a particular client, which is either based on the potential tax-relief available to that client, or alternatively is based on the potential tax-relief that could be obtained in respect of a specific product, the adviser should ensure that as part of the suitability assessment carried out, the implications of choosing to opt for either one of the income tax systems has been properly considered.

This means that an adviser should, as part of that assessment, clearly demonstrate to the client the impact and effect of opting for either the allowance-based system or the gross income-based system. The FSC will therefore expect that this be clearly evidenced on file, with for example, a comparison of the tax-impact of both these systems for that particular client.

Likewise, where the investment recommendation is specifically based on the tax-relief available in respect of a particular product or products, the FSC will expect that the basis of the recommendation be clearly articulated in the relevant documentation on file. This should also include a comparison of the two systems and clearly demonstrate the reason, from both an investment perspective as well as a tax perspective, for the investment recommendation being made.

This is in line with the requirement set out in Statement of Principle 9 of the Financial Services (Conduct of Business Investment Firms & Insurance Intermediaries) Regulations 2006, which requires a firm to take reasonable steps to ensure that a customer it advises is given, in a timely way, any information needed to enable him to make a balanced and informed investment decision, and information given is clear, fair and not misleading.