



**COUNTRY
COMPARATIVE
GUIDES 2023**

The Legal 500 Country Comparative Guides

Gibraltar TAX

Contributor

ISOLAS LLP



Emma Lejeune

Partner | emma.lejeune@isolas.gi

Stuart Dalmedo

Partner | stuart.dalmedo@isolas.gi

Louise Anne Turnock

Associate | louise.turnock@isolas.gi

This country-specific Q&A provides an overview of tax laws and regulations applicable in Gibraltar.

For a full list of jurisdictional Q&As visit legal500.com/guides

GIBRALTAR TAX



1. How often is tax law amended and what is the process?

Apart from previous transposition of EU directives into our laws, tax law is amended by instigation from the Government of Gibraltar, or as an initiative driven by the industry itself at any time. Normally, a bill of legislation incorporating the proposed amendments is presented to the Gibraltar Parliament who will ultimately decide if the new law is passed.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

The Gibraltar tax year runs from 1 July – 30 June.

Persons other than companies (i.e. individuals and trusts)

Non-companies with income assessable to taxation in Gibraltar must prepare and file their tax returns for each tax year by the 30 November following the end of that tax year.

Companies

Companies must prepare their tax returns according to their financial year end. Companies' tax returns must be filed within nine months after the date of its financial year end. For example, a company with a 31 December year end must prepare its tax return from 1 January to 31 December and file it by 30 September and a company with a 30 June year end must prepare its tax return from 1 July to 30 June and file it by 30 March etc.

Maintenance of records

Individuals, Companies and Trusts are all required to keep records of all business transactions including books containing daily entries of all cash received and cash paid, statements of annual stocktaking, all goods sold and purchased showing sufficient detail to enable those

goods, buyers and sellers to be identified and any contracts, invoices or other underlying documentation significant to the trade, business profession or vocation undertaken, for at least six years from the end of the period for which they are required to deliver a return.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

The key regulatory authority is the Commissioner for Income Tax, who manages the Income Tax Office and is responsible for the administration and collection of tax in Gibraltar. The Minister for Finance is ultimately responsible for matters handled by the Income Tax Office.

Generally, their engagement with taxpayers is made on a case-by-case basis and tax issues are usually resolved through open communication with the Income Tax Office. The Income Tax Office is on the whole, very easy to deal with and readily accessible and able to help on any queries.

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

Yes, there is an Income Tax Tribunal ("Tribunal") that handles tax matters. Members of the Tribunal are appointed by the Minister by notice in the Gazette and hold office for a period of one year or for such other period of time specified in the notice of appointment. Any party to proceedings which are to be heard by the Tribunal may serve notice on the Tribunal's clerk requesting a date for the hearing to be fixed. On receipt of this notice the clerk shall send notice to each party entitled to attend the proceedings of the place, date and time of the hearing. The date of hearing unless specified otherwise by the parties shall not be earlier than twenty eight days after the date on which the notice is sent to

the parties.

Any party to the proceedings if dissatisfied with the determination or decision as being erroneous in point of law, may within twenty one days after the final determination, by notice served on the clerk and payment of the fee require the Tribunal to state and sign a case for the opinion of the Supreme Court.

On 26 July 2019 H.M. Government of Gibraltar introduced the Tax Dispute Resolution Regulations 2019, which give effect to Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (the "Directive"). The Directive lays down rules on a mechanism to resolve dispute between Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital, and lays down the rights and obligations of the affected persons when such disputes arise.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

Individuals

Taxes from income from employment is deducted from wages and salaries under the Pay As Your Earn ("PAYE") system. Every employer paying emoluments to an employee is required to deduct from the amount of emoluments a specified amount of tax and social contributions. Payment is due by the 15th day the following month.

Self-employed individuals must make two payments on account, by 31 January and 30 June, in each year and each payment on account should be 50% of the tax paid in the previous year's assessment. Final payment of any outstanding tax for that year should be submitted with the individual's tax return (30 November following the end of the tax year) and should be the tax liability for that year less the two payments on account made.

Companies

Companies are required to make two payments on account, by 28 February and 30 September, in each year and each payment should be 50% of the tax paid for a relevant accounting period as defined within the Income Tax Act 2010 ("Tax Act"). Final payment of any outstanding tax for that year should be submitted with the company's tax return and should be the tax liability for that year less the two tax payments on account made.

Trusts

Trustees of a trust with income assessable to taxation in Gibraltar must make two payments on account, by 31 January and 30 June, in each year and each payment on account should be 50% of the tax paid in the previous year's assessment. Final payment of any outstanding tax for that year should be submitted with the trust's tax return (30 November following the end of the tax year) and should be the tax liability for that year less the two payments on account made.

Disputes

If a taxpayer disputes an assessment, he may appeal against that assessment by notice in writing addressed to the Commissioner within 28 days of the date of service of the notice of the assessment. Any appeal shall be to the Tribunal and the notice of appeal against any assessment shall state the grounds of the appeal, in such reasonable detail as to enable all parties to the appeal to be aware of the issues to be contested.

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Yes, the Income Tax Office will need to ensure compliance with the provisions of the General Data Protection Regulation ("GDPR") which has been transposed into Gibraltar law as a result of the European Directive.

The Tax Office will however, be required to disclose data on any particular taxpayer if he is the subject of an investigation by any other tax authority and the information requested has been done so validly under the provisions of a Tax Exchange of Information Treaty or applicable directive.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Yes, Gibraltar has adopted the Common Reporting Standard and also maintains a public register of beneficial ownership, which is maintained by the Finance Centre.

8. What are the tests for determining residence of business entities (including

transparent entities)?

In order to be considered ordinarily resident in Gibraltar a company must either be managed and controlled in Gibraltar, or where the management and control is exercised outside Gibraltar by persons who are ordinarily resident in Gibraltar.

In order for an individual to be considered ordinarily resident in Gibraltar (irrespective of whether such individual is domiciled in Gibraltar or not) for any year of assessment must be present in Gibraltar for a period of, or periods together amounting to at least 183 days, or must be present in Gibraltar in any year of assessment which is one of three consecutive years in which the total days on which the individual is present in Gibraltar exceeds 300 days.

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

Gibraltar's Mandatory Disclosure Regime (MDR) imposes a requirement to disclose to the Commissioner of Income Tax any cross-border arrangement or transaction that falls within Category D hallmark of the EU Directive on cross-border tax arrangements (DAC6). This category comprises the obscuring of beneficial ownership and arrangements which undermine the reporting requirements under the laws implementing EU legislation or any equivalent agreements on the automatic exchange of Financial Account information.

However, for cross-border arrangements involving Gibraltar and Spain, all of the hallmarks contained in DAC 6 (Hallmarks A-E) still need to be considered.

Reporting parties

MDR requires "intermediaries" – or if there is no intermediary, the taxpayer – to report.

An intermediary is, broadly-speaking, any professional who provides assistance or advice in planning, making available or implementing a transaction or arrangement. They are most likely to be tax consultants, company managers, or lawyers, but in some circumstances could include others, such as insurance managers or banks.

An intermediary is defined as being any person that:

- designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement; or
- having regard to the relevant facts and

circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

CFC rules

CFC rules have been introduced under which the non-distributed income of a company or permanent establishment arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage must be included as income of the taxpayer for that tax period.

In order for an entity or permanent establishment to be considered as a CFC under the Regulations, two conditions must be satisfied. Firstly, in the case of an entity, the taxpayer must by itself or together with its associated enterprises, hold a direct or indirect participation of more than 50% of the voting rights or capital, or must be entitled to receive more than 50% of the profits of that entity. Secondly, the actual tax paid by that entity or permanent establishment must be lower than the difference between the tax that would have been charged on the entity or permanent establishment in accordance with the Act and the actual tax paid on its profits.

An arrangement or a series thereof is regarded as non-genuine under the Regulations to the extent that the entity or permanent establishment would not own the assets or would not have undertaken the risk which generate all or part of its income if it were not controlled by a company where the significant people functions which are relevant to those assets and risks, are carried out and are instrumental in generating the CFC's income. Where there is such non-genuine arrangement, the income to be included will be the calculated in accordance with the arm's length principle.

In order to ensure that there is no double deduction:

- where the entity distributes profits to the taxpayer, and those distributed profits are included in the assessable income of the taxpayer, the amounts of income previously included as income of the taxpayer shall be

deducted from the income of the taxpayer when calculating the amount of tax due on the distributed profits;

- where the taxpayer disposes of its participation in the entity of the business carried out by the permanent establishment, and any part of the proceeds from the disposal previously having been included in the income of the taxpayer, that amount shall be deducted from the income of the taxpayer when calculating the amount of tax due on those proceeds; and
- the Commissioner of Income Tax shall also allow a deduction of the tax paid by the entity or permanent establishment in its state of residence or location from the tax liability of the taxpayer in accordance with section 37 of the Act.

Entities or permanent establishments with accounting profits of no more than €750,000, and non-trading income of no more than €75,000 or those which the accounting profits amount to no more than 10% of its operating costs for the tax period will not be considered as CFCs under the Regulations.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

Transfer Pricing

The general anti-avoidance rule in the Income Tax Act should be interpreted in the manner that best secures consistency with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and other documents designated as comprising part of the transfer pricing guidelines.

Thin capitalization

Interest paid on a loan by a company to related parties (which are not themselves a company) or loans where security is provided by related parties, where the ratio of the value of the loan capital to the equity of the company exceeds 5 to 1 is considered as a dividend payment and thus not a deductible expense for tax purposes.

Safe harbour

On the 20 December 2022, the OECD released new documents relating to the global minimum taxation rules, one of which is the "guidance on safe harbours and penalty relief", which contains an agreed temporary

"CbCR safe Harbour" for the initial three years. The Globe rules form part of the Pillar Two initiative.

Recently, in the 2023 budget speech, the Chief Minister of Gibraltar, announced that the Government will be looking at commencing a consultation process in respect of new incentives, a distinct new regime for companies within the scope of Pillar Two and a domestic minimum top-up tax. Such measures are expected to apply to accounting periods commencing on or after 31 December 2023. It is therefore the case that the Pillar II objectives have not yet been met, but it is something which the Government is aiming to achieve by the end of the year. The Pillar Two Model Rules are designed to ensure large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate. Taxpayers in scope of the rules calculate their effective tax rate for each jurisdiction where they operate and pay a top-up tax for the difference between their effective tax rate per jurisdiction and the 15% minimum rate.

The Income Tax Act contains an interest limitation rule provision, which applies to ordinarily resident companies which have assessable income under the provisions of the Income Tax Act, or permanent establishments of any such company resident in another European Union Member State or a third country. However, financial undertakings and standalone entities are specifically excluded from the scope of the interest limitation rule. Additionally, under the Income Tax Act there is a "safe harbour clause", which allows for exceeding borrowing costs incurred by a taxpayer to be deductible in the tax period in which they are incurred up to €3,000,000 for the entire group regardless of the EBITDA.

Advance pricing

Gibraltar has no bilateral initiative for concluding advance pricing agreements/arrangements. Therefore there is no system for Gibraltar, a taxpayer and the tax authority of another jurisdiction to agree the pricing to be applied to transactions affecting the position in these jurisdictions.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

Yes, our Tax Act does contain anti avoidance provisions which are applied by the tax authority whereby the Commissioner may disregard part or all of any arrangements that are deemed to be artificial/or fictitious and whose purpose is to reduce or eliminate

tax payable in Gibraltar. Companies will be expected to have regard to GAAR and other relevant international standards.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

No, at present, there is no digital services tax in Gibraltar.

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

In July 2023, 138 out of 143 members of the OECD/G20 Inclusive Framework (including Gibraltar), representing more than 90% of global GDP, officially agreed an outcome statement recognising the significant progress made and allowing countries and jurisdictions to move forward with historic, major reform of the international tax system. The outcome statement agreed at the 15th meeting of the inclusive framework follows 20 months of intense technical negotiations by delegates to continue to work to implement the two-pillar solution. The outcome statement summarizes the package of deliverables developed by the Inclusive Framework to address the remaining elements of the Two-Pillar Solution, which are as follows:

- A text of a multilateral convention developed by the Inclusive Framework, which allows jurisdictions to reallocate and exercise a domestic taxing right over a portion of MNE residual profits.
- A proposed framework for the simplified and streamlined application of the arm's length principle to in-country baseline marketing and distribution activities, where input from stakeholders is requested on certain aspects prior to finalization.
- The subject to tax rule together with its implementation framework, which will enable developing countries to update bilateral tax treaties to "tax back" income on certain intra-group income where such income is subject to low or nominal taxation in the other jurisdiction.
- A comprehensive action plan will be prepared by the OECD to support the swift and coordinated implementation of the Two-

Pillar Solution, coordinating with regional and international organisations.

Further, and in a significant development since October 2021, 138 countries and jurisdictions have also agreed in the outcome statement to refrain from imposing newly enacted digital services taxes or relevant similar measures on any company before 31 December 2024.

In order to deliver the implementation of the Pillar Two Solution, the Chief Minister of Gibraltar, in the 2023 budget speech announced the intention to commence a consultation process to see the implementation of new incentives, a distinct new regime for companies within the scope of Pillar Two and a domestic minimum top-up tax and ensure that the OECD's policy objectives are met.

15. How has the OECD BEPS program impacted tax policies?

The policy of successive Gibraltar governments has been to provide a competitive tax environment that is fully compliant with international best practice, and Gibraltar has always been an early complier with OECD and other international initiatives. We expect that policy to continue.

16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

Gibraltar has its own tax system however, it was placed on the OECD white list of territories that has substantially implemented the internationally agreed standard on tax information exchange.

In September 2020 Gibraltar, once again, achieved a rating of 'Largely Compliant' in an independent review of tax information, conducted by the OECD. This retains Gibraltar's position alongside leading jurisdictions including the UK, US, Germany and Spain.

Companies

Gibraltar taxes on profits that are accrued and derived in Gibraltar as a result of activities or services carried out from Gibraltar. It applies a corporate rate of tax of

12.5%.

Individuals

Income tax is charged on income accruing in or derived from Gibraltar. Income tax is also charged on certain income accruing in, deriving from, or received in any place other than Gibraltar by any person ordinarily resident in Gibraltar.

Tax payers may opt to be taxed under the Gross Income Based System ("GIBS") or the Allowance Based System ("ABS"). The Commissioner of Income Tax will calculate the final assessment on the basis of the system that is most beneficial for the taxpayer, irrespective of the system that is chosen by the taxpayer at the beginning of the tax year.

GIBS Rates (currently in force 2023/2024)

The income bands and tax rates for income up to £25,000 are:		The income bands and tax rates for income above £25,000 are:	
First £10,000	7%	First £17,000	17%
£10,001 - £17,000	21%	£17,001 - £25,000	20%
Balance	29%	£25,001 - £40,000	26%
		£40,001 - £105,000	29%
		Balance	26%
		First 17,000	18%
		£17,001 - £25,000	21%
		£25,001 - £40,000	27%
		£40,001 - £105,000	30%
		Balance	27%
The income bands and tax rates for income exceeding £100,000			

ABS Rates (currently in force 2023/2024)

Taxable Income bands	Rate % (Gross income assessable less than £100,000)
£0 - £4,000	15
£4,001 - £16,000	18
Over £16,000	40
	Rate % (Gross income assessable over £100,000)
£0 - £4,000	16%
£4,001 - £16,000	19%
Over £16,000	41%

- The allowances and reliefs that apply under each system differ.
- Pension income from an approved pension will not suffer tax in Gibraltar.
- Gibraltar does not levy any VAT.
- There is no capital gains tax in Gibraltar.

- Passive income is not taxable in Gibraltar.
- Royalties income is subject to tax at 12.5%.
- Gibraltar has no capital gains tax.
- Gibraltar has no inheritance tax.
- Gibraltar has no wealth tax.
- Stamp duty is only applied on the transfer of property (or transfer of shares where the company holds Gibraltar property) at the following rates:

Where purchase price does not exceed £200,000 Nil.

Purchase price of between £200,001 and £350,000 2% on first £250,000 and 5.5% on balance.

Purchase price of over £350,000 3% on first £350,000 and 3.5% on balance.

First and second-time buyers	
First £260,000	Nil
Balance above £260,000 to £350,000	5.5%
Balance above £350,000	3.5%
Other buyers	
Where purchase price does not exceed £200,000	Nil
Purchase price of between £200,001 and £350,00	2% on first £250,000 and 5.5% on balance
Purchase price of over £350,000	3% on first £350,000 and 3.5% on balance

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

Yes, the standards applied are normally the accounting principles of the UK or those of the European Union depending on the nature of the transaction.

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

Yes, companies and trusts that have assessable income in Gibraltar are subject to tax at a rate of 12.5%. Partnerships are tax transparent and taxed in the hands of the Partners.

19. Is liability to business taxation based on tax residence or registration? If so,

what are the tests?

Gibraltar generally levies tax on a territorial basis. This will be determined on whether income accrues or derives from Gibraltar or as a result of services being rendered in Gibraltar. Those businesses whose income arises from an underlying activity that requires a license and is regulated under any law of Gibraltar (or is licensed in another jurisdiction but enjoys passporting rights into Gibraltar) shall be deemed to accrue in and derive from Gibraltar.

Income which is not accrued in or derived from Gibraltar is not taxed in Gibraltar. "Accrued in and derived from" is defined by reference to the location of the activities which give rise to the profits. Where the income is intercompany interest or royalties it is automatically deemed to accrue in and derive from Gibraltar if it is received by a Gibraltar company.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

Category 2 ("Cat 2")

Gibraltar offers the opportunity for high net worth individuals to obtain Cat 2 status which places a cap over the tax liability of that individual. Tax is applied to the first £118,000 of assessable income (including worldwide income) meaning that a Cat 2 individual will pay a maximum of £44,740 tax per annum, subject to a minimum payable of £37,000 per annum (current rates).

Conditions of obtaining Cat 2 status:

- The individual must be of substantial and sound financial standing and have a minimum net worth of £2 million.
- The Cat 2 individual must either own or rent Cat 2 approved residential accommodation in Gibraltar.
- The Cat 2 individual cannot have been resident in Gibraltar during the five years immediately preceding the year of assessment.
- Must have private full risk medical insurance which extends to Gibraltar and that covers repatriation amongst other things.

High Executive Possessing Specialist Skills ("HEPSS")

HEPSS status is a special employment status available to those individuals who intend to relocate to Gibraltar and

take up employment. The tax payable by a HEPSS is limited to the first £160,000 of earned income. This would mean that an individual with HEPSS status would pay a fixed rate of £43,140 tax per annum (current rates) regardless of how much they would earn from that employment.

Unlike Cat 2 status which applies to the individual, HEPSS status does not apply to the individual. The application is made by a company on behalf of an eligible employee.

Conditions for obtaining HEPSS Status

- Applicants must possess skills not already present in Gibraltar, their coming to Gibraltar must also help promote and sustain economic activity in Gibraltar.
- Applicants must earn more than £160,000.
- Applicants cannot have been resident in Gibraltar for the three years immediately preceding the application.

HEPSS individuals must live in a Gibraltar qualifying property (similar to those of Cat 2 residents).

21. Are there any special tax regimes for intellectual property, such as patent box?

At present, there are no regimes in place.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

Losses can be carried forward indefinitely but there is no such relief. Although it is possible to have consolidated accounts for a group, there is no group relief available in Gibraltar for tax purposes. Entities would be taxed individually in accordance with the profits of that entity.

Recently, in the 2023 budget speech, the Chief Minister of Gibraltar, announced that the Government will be looking at commencing a consultation process in respect of new incentives, including the introduction of group relief provisions.

23. Are there any withholding taxes?

Except in the cases of payments to subcontractors in the construction industry and payments to employees under the PAYE system, there are no withholding taxes in Gibraltar.

24. Are there any environmental taxes payable by businesses?

Not at present.

25. Is dividend income received from resident and/or non-resident companies taxable?

There is no charge to tax on the receipt by a Gibraltar company of dividends from any other company, regardless of where incorporated. There is no tax on dividends paid by one Gibraltar Company to another, and there is no liability to tax on dividends paid by a Gibraltar company to a person who is not resident in Gibraltar.

Where a dividend, or part of a dividend, is the distribution of profits that were not assessable to tax in Gibraltar in the hands of the company that originally generated the income, then the dividend, or relevant

part of the dividend is not taxable in the hands of an ordinarily resident individual receiving the dividend.

There is also no withholding tax on dividends paid, however, where a company declares a dividend, a return of dividends is required. Listed companies are exempted from this requirement.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

Regardless of whether Gibraltar forms part of the EU by virtue of following the UK regarding Brexit, it is likely that it will continue to adhere to the same standards which will be reflected in local legislation.

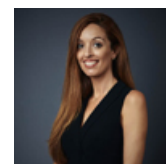
As a UK overseas territory, it is proposed that Gibraltar would continue to have access to the UK markets for financial services post Brexit, and therefore anyone looking to re-locate from the UK to Gibraltar would continue to experience a number of benefits.

Located in the Mediterranean and in the geographic confines of continental Europe yet endowed with a familiar, reliable and predictable common-law system, Gibraltar is an attractive place for individuals wishing to relocate and/or do business.

Contributors

Emma Lejeune
Partner

emma.lejeune@isolas.gi



Stuart Dalmedo
Partner

stuart.dalmedo@isolas.gi



Louise Anne Turnock
Associate

louise.turnock@isolas.gi

