

**Relocating to Gibraltar**

There are many factors which would attract someone to relocate to Gibraltar. Situated on the southern tip of the Iberian Peninsula, “the Rock” enjoys a temperate Mediterranean climate with mild winters and warm summers. The accessibility of nearby historical and cultural Andalucía in Spain, coupled with its spectacular scenery and wildlife, makes Gibraltar a popular destination.

Gibraltar is easily accessible from many European cities. There are regular scheduled flights from London, Manchester and Liverpool, and the new airport terminal, which became operational in November 2011, is expected to establish flights from Madrid and other Spanish locations. There are also frequent flights from many major cities to Malaga airport, which is just one hour’s drive from Gibraltar.

The constitutional status of Gibraltar is unique. It is a British Overseas Territory and is part of the European Union (‘EU’), having joined in 1973 when the United Kingdom (‘UK’) acceded to the EU. Although Gibraltar is not a separate Member State in its own right, it is a distinct jurisdiction with its own political institutions. Nationals of member states do not require a permit to work in Gibraltar.

Gibraltar is a common law jurisdiction and is almost entirely self-governing, with the Gibraltar Parliament enacting legislation in all areas of local concern. The UK retains responsibility in limited aspects such as foreign affairs and defence.

It is a thriving European financial centre and is home to many of the largest players in the international online gaming world. It has an excellent infrastructure and a lower cost of living than the UK.

At the time of writing, Gibraltar has entered into 18 Tax Information Exchange Agreements (‘TIEAs’) with various countries, which fulfils the Organisation for Economic Co-operation and Development (‘OECD’) requirement to be a party to a minimum of 12 TIEAs. Accordingly, Gibraltar is now on what is commonly known as the OECD’s “white list” of jurisdictions, which are those which have substantially implemented the standard set by the OECD for transparency and effective exchange of information for tax purposes. This clear commitment of transparency has further strengthened Gibraltar’s position as a first-class and internationally-recognised global finance centre.

In addition to all of the lifestyle advantages, Gibraltar provides a tax efficient environment for individuals as well as companies.

**Personal taxation**

Gibraltar has in place a dual income tax system for ordinary tax-paying individuals, under which, such persons may elect the basis on which they will be taxed. One system, the Allowance Based System (‘ABS’) has been established for some time. The second, more novel, Gross Income Based System (‘GIBS’), applies lower tax rates but the taxpayer may not benefit from allowances and relief, such as personal and home purchaser allowances, available under the ABS. Regardless of the tax system elected, the Commissioner of Income Tax will calculate the final assessment based on the system which is most beneficial to the individual taxpayer.

In addition, there are two special tax regimes for individuals who move to Gibraltar. One of these systems, the Category 2 Individual regime, was established to attract high-net-worth retirees and entrepreneurs to relocate to Gibraltar.

Under this regime, only the first GBP80,000 of assessable income is taxable, subject to a minimum payment of GBP22,000. In order to qualify for Category 2 Individual status, the applicant must:

- Have a minimum net wealth of GBP2million;
- Have accommodation in Gibraltar, which has been approved by the Finance Centre Director ('FCD'), available for his or her exclusive use throughout the entire tax year. This accommodation may be purchased or rented; and
- Not have been resident or worked in Gibraltar during the five years immediately preceding the application.

Executives and senior management personnel may avail themselves of the other special tax regime, which was introduced by the High Executives Possessing Specialist Skills Rules. Applicants under this scheme must, in the view of the Government of Gibraltar ('GoG'), possess specialist skills which are necessary to promote and sustain economic activity which is either: of particular economic value to Gibraltar, or is one, the development and growth of which GoG is encouraging.

Applicants under this scheme must earn a minimum of GBP100,000 per annum, have exclusive use of FCD-approved accommodation and must not have been working in Gibraltar during the three years immediately preceding the application. Individuals who qualify under this scheme will have the amount of tax payable calculated on a maximum amount of GBP120,000, irrespective of worldwide income. At current rates, this would give rise to an annual tax liability of around GBP32,500. Tax would be payable under the GIBS.

In addition to the above, there is no capital gains tax, inheritance tax or other wealth taxes in Gibraltar, and no indirect taxes such as VAT. Although Gibraltar is part of the EU, it is exempt from this common policy as well as the Common Customs Tariff and the Common Agricultural Policy. Stamp duty is only payable in respect of Gibraltar real estate. Furthermore, taxation on savings income (which includes bank deposit interest and dividends from quoted securities) has been abolished.

### **New Corporate Tax Regime**

Gibraltar has, over the last several years, been completing the process of repositioning itself away from a perceived tax haven to a financial centre of the onshore European variety. This development has most notably involved the abolition of the nil-corporate tax regime, which was available to 'tax exempt companies' as defined by the Companies (Taxation and Concessions) Act.

In order to comply with the relevant EU guidelines, Gibraltar announced its decision several years ago to reform its corporate tax system. The proposed basis of the reform was challenged by the EU Commission on the grounds of "regional" and "material" selectivity and it was further determined that the proposed new system amounted to State Aid, in breach of the relevant EU rules. This finding was separately appealed by both the Gibraltar and UK governments.

In late 2008, the European Court of Justice delivered a ruling which confirmed Gibraltar's right to retain and develop a corporate tax system distinct to that of the UK ('the Ruling'). This judgment makes it clear that Gibraltar has the procedural, economic and administrative independence from the UK to allow it to develop its own taxation regime.

Following the Ruling, GoG has reformed the corporate tax system which, from 1<sup>st</sup> January 2011, delivered a new low corporate tax rate of 10%, in line with other low tax corporate arrangements which already exist in the Republic of Ireland, Cyprus and several other EU countries.

All companies which previously enjoyed tax exempt status lost this at the end of 2010 and are taxed at the new 10% rate. There is a surcharge of an additional 10% on utilities companies and any company which has a dominant market position and abuses it.

Companies are liable to corporation tax in Gibraltar on specified sources of income which are 'accrued in, derived from or received in' Gibraltar. The Commissioner of Income Tax has given some guidance on the correct interpretation of the terms 'accrue in' and 'derived in' and stated that it is necessary to establish

what the company has done in order to earn the relevant profit and, more importantly, where these activities have taken place.

There are other tax benefits available to Gibraltar companies. These include the absence of capital gains tax, which means that there is no tax or charge payable in respect of gains made by companies in relation to the disposal of capital assets and, again, no indirect taxes such as VAT.

Royalty payments arising in Gibraltar are not subject to tax, meaning that companies which utilise intellectual property can centralise their IP rights in Gibraltar and not suffer tax.

Gibraltar does not impose withholding tax on dividend distributions made by Gibraltar companies. Furthermore, by virtue of being part of the EU, the Parent and Subsidiary Rules apply locally. These rules, subject to certain conditions being met, abolish withholding taxes in respect of dividend payments from subsidiaries to its parent located in another EU member state.

When all of the above is taken together, Gibraltar is a great jurisdiction from which a company can base its operations.

### **Conclusion**

The introduction of the new tax regime will significantly reinforce Gibraltar's position as an established international finance centre in the EU.

The jurisdiction continues to prosper economically and remains a stable location from which to do business. The advantageous tax environment will continue to be attractive to businesses wishing to utilise Gibraltar as part of their tax structuring or as a centre in which to establish their operations.

The geographical position of Gibraltar and its beneficial tax regime, among other positive factors, indicates that Gibraltar will likewise continue to encourage individuals, particularly those qualifying as high-net-worth, to relocate to the jurisdiction.

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