



GIBRALTAR AND TAXATION

Gibraltar is a British Overseas Territory. As such, it does not form part of the United Kingdom. Gibraltar's system of governance is set out in the Gibraltar Constitution 2006, which entered into force on 1 January 2007 and which replaced the previous Constitution of 1969. The Constitution establishes Gibraltar's executive, legislature and judiciary distinct from those of the United Kingdom. The Gibraltar Parliament has full and extensive powers to adopt legislation in relation to any matter, including taxation. The Gibraltar Government is termed "Her Majesty's Government of Gibraltar" ("HMGoG"). It consists of Her Majesty, represented in Gibraltar by the Governor, and the elected Government. In this Note, HMGoG refers to the elected Government. HMGoG has full executive competence for all taxation matters in Gibraltar.

Gibraltar and the United Kingdom constitute two entirely separate and distinct fiscal territories. HMGoG and the Gibraltar Parliament devise the tax regime applicable in Gibraltar taking account only of the specific circumstances and characteristics of its economy, without being in any way influenced or restricted by the tax laws or policies adopted in the United Kingdom. The tax laws of the United Kingdom have never been applied in Gibraltar.

Gibraltar receives no subsidy or financing of any kind from the United Kingdom. It raises all its revenue from its own taxation. HMGoG adopts the economic policies which it considers to be best suited to the territory with no reference to the United Kingdom's economic policies. It mints and prints its own currency, determines its own money supply and decides its borrowing and expenditure by itself.



In the terms of the EU Treaties, Gibraltar is a European territory for whose external relations a Member State (the United Kingdom) is responsible within the meaning of Article 355 (3) TFEU. As such, EU law applies in full to Gibraltar subject to the limited exceptions set out in Articles 28-30 of the 1972 Act of Accession. These exceptions include EU harmonisation measures on turnover taxes. EU rules on direct taxation do, however, apply in full to Gibraltar.

HMGoG and the Gibraltar Parliament are responsible for the transposition of all EU measures within the internal legal order of Gibraltar. The UK transpositions have no effect in Gibraltar. In response to a question in the European Parliament on 4 November 2013, Commissioner Barnier, then Commissioner for the Internal Market, confirmed that there were:

1. No infringement proceedings concerning the non-transposition of Directives on financial services in Gibraltar.
2. No Directives on exchange of information or mutual assistance on tax matters outstanding for transposition in Gibraltar.
3. No Directives to combat money laundering outstanding for transposition in Gibraltar.
4. No Directives, the transposition deadline of which has passed, which have not been transposed in Gibraltar.
5. No well-founded complaints against Gibraltar for an alleged failure to provide or exchange information or to collaborate on tax, financial services or money laundering matters.

That remains the position today. Gibraltar remains fully compliant with all its transposition obligations. Gibraltar's compliance record with anti-money laundering international



standards and with the supervision of financial regulation has also been robustly endorsed by the FATF and the IMF respectively.

Gibraltar's tax system is contained in the Income Tax Act 2010 ("ITA 2010") which entered into force on 1 January 2011. The ITA 2010 establishes a **single system of taxation for all companies in Gibraltar** based on the territorial system of taxation. The general tax rate for companies in Gibraltar is 10%. The 10% rate applies across the whole economy, except for utility companies and companies enjoying monopoly power in the Gibraltar market which are subject to a 20% rate. There is no offshore tax rate, or offshore companies, in Gibraltar. These were abolished in 2005 further to a state aid investigation by the European Commission.

At its 21 June 2013 meeting, ECOFIN endorsed the ITA 2010 as compliant with the EU Code of Conduct for Business Taxation. Prior to that meeting the Code of Conduct Group had found in Gibraltar's favour by a crushing majority vote. Spain, regrettably, continues to raise issues about the ITA 2010 in the Code of Conduct Group. HMGoG continues to engage in that process even though it considers that the Code Group is being used by Spain to pursue its political agenda of the destabilisation of Gibraltar.

Similarly, further to another complaint filed by Spain, the ITA 2010 is also being examined by the European Commission under EU state aid rules. HMGoG has been cooperating fully with this examination and has produced a very considerable amount of information to the European Commission. HMGoG is confident that the ITA 2010 does not contain any element of state aid and is hopeful that a decision to this effect will shortly be taken by the European Commission.

On 18 June 2013, the Chief Minister of HMGoG wrote to the Spanish Minister for Finance inviting him to send a team of his officials to Gibraltar to examine first hand Gibraltar's compliance with all applicable EU and international initiatives on taxation, transparency



and money laundering. Sadly, the Chief Minister has not received a response to his invitation, which nevertheless remains open.

Gibraltar now has a vast network of arrangements for the **exchange of information** on tax matters :

1. Gibraltar has, to date, negotiated and signed 27 Tax Information Exchange Agreements (TIEAs) with EU Member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Malta, the Netherlands, Poland, Portugal, Sweden, the United Kingdom) and other major OECD Member countries (Australia, India, Mexico, New Zealand, South Africa and the USA) amongst others.
2. The OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (as amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters) was extended to Gibraltar on 13 November 2013 and became effective on 1 March 2014.
3. Gibraltar has transposed, with effect from 1 January 2013, EU Directive 2011/16 on exchange of information on tax matters which is recognised by the OECD itself as being equivalent to a TIEA, thereby providing OECD-equivalent exchange mechanisms with all the EU Member States.
4. Gibraltar has transposed the EU Savings Directive (Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments) and since 2005 has been providing the required information under that Directive on an automatic basis.



5. On 21 November 2013, Gibraltar entered into a Foreign Account Tax Compliance Act (“FATCA”) Inter-Governmental Agreement with the United Kingdom on automatic exchange of tax information.
6. On 8 May 2014, Gibraltar entered into a similar FATCA Inter-Governmental Agreement with the USA.
7. On 29 October 2014, Gibraltar signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (“MCAA”), colloquially known as “Global FATCA”. Some 90 countries are now committed to this Common Reporting Standard.

Finally, Gibraltar will be transposing the recently agreed 4th Anti-Money Laundering Directive pursuant to which it will establish a Central Register on beneficial ownership granting full access to such information to the law enforcement bodies in the Member States.

Gibraltar’s overall performance on exchange of tax information was recently examined by the OECD. Gibraltar received a glowing review from the OECD. The OECD Phase 2 Review Report published on 29 October 2014 gave Gibraltar an overall rating of “Largely Compliant”, the same as the United Kingdom and Germany.

Her Majesty’s Government of Gibraltar

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