

STEADFAST CORPORATE SERVICES

Gibraltar Taxation for Companies and Trusts

Gibraltar taxes are, in many respects, modelled on those in the United Kingdom. However, in certain areas, Gibraltar enjoys a more liberal fiscal regime. In particular, there are no capital taxes such as Capital Gains Tax, Wealth Tax, Inheritance Tax or Estate Duty. No tax is payable on non-trading interest income, dividends from listed investments and royalties. In addition, specific provisions in the legislation makes Gibraltar particularly attractive for high net worth individuals wishing to take up residence on the Rock and for individuals occupying senior management positions who possess specialist skills not available locally.

Though Gibraltar is a part of the European Union under Article 355(3) of the Treaty of Rome, it is specifically excluded from the regulations concerning the Common Agricultural policy, Value Added Tax and the Common Customs Tariff.

Income Tax Act 2010

This new Act took effect from 1st January 2011 and under the new regime, the headline Corporation Tax rate has been reduced from 22% to 10% except for energy and utility providers which are subject to a rate of 20%. A new self-assessment system has been introduced for taxpayers, together with surcharges being due for late payment.

Double-Tax Treaties and Exchange of Information

Gibraltar does not have double-tax treaties with any other jurisdiction. However, tax relief is available in respect of income tax paid or payable in other jurisdictions, provided that such tax is being levied on income from that jurisdiction. The tax relief is the lower of the tax payable in Gibraltar on that income or the tax suffered in the other jurisdiction.

Gibraltar has signed OECD-style Exchange of Information agreements with twenty seven countries to date (as of 22nd October 2013), these being:

Australia, Austria, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greece, Greenland, Guernsey, Iceland, India, Ireland, Italy, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, South Africa, Sweden, Turkey, United Kingdom, United States

Territorial basis

Companies are chargeable to tax on specified types of income **accruing or derived** in Gibraltar.

Where the underlying activities of a company resulting in income require a licence and regulation in Gibraltar, then the income is deemed to be in Gibraltar. This brings most financial services and gaming companies licensed in Gibraltar into the tax net, although there is an exception in respect of the income of a branch or permanent establishment of a Gibraltar-licensed company which carries out activities outside Gibraltar.

Therefore, where a company's activities which give rise to income take place outside Gibraltar then that income is not subject to tax in Gibraltar (for example, the letting of property where that property is situate outside Gibraltar). However, it is necessary to look at the specific circumstances of each case. The Commissioner of Income Tax will give advanced rulings provided all the facts are put before him.

Tax year

Companies are assessable on their financial period on an actual basis.

Deductions

In order to arrive at taxable profits, only costs incurred wholly and exclusively for the production of the company's income can be deducted from its income to arrive at taxable profit. Some costs are specifically not deductible, for example:

- Depreciation and amortisation (capital allowances are given instead – see below);
- Donations;
- Capital expenditure – for example the purchase or the improvement of a fixed asset.
- Contributions to a non-approved pension or similar fund;
- Certain entertainment expenses;
- An allocation on a pro-rata basis of certain expenditure.

Capital allowances

The new Act has simplified the calculation of these, with the introduction of a “pool” for the underlying assets.

An initial 100% allowance is given on assets acquired in a financial year, up to an amount of £30,000 for plant and machinery (this includes furniture, equipment, fixture and fittings) and up to £50,000 for IT expenditure (this includes hardware and software).

Any excess of expenditure over the initial allowance is put into a pool, and an annual allowance of 15% of this pool is also given (or at 20% in the case of companies taxable at a rate of 20% - see section on Tax Rates above). The balance left on the pool at the end of the financial year is carried forward to the subsequent year. Proceeds of any disposal are deducted from the pool.

Losses

As before, losses can be carried forward indefinitely to be offset against future profits, but cannot be carried back and offset against prior year profits.

Dividends, interest, royalties and investment income

Dividends paid by Gibraltar companies are not subject to withholding tax. Such dividends are only taxable in Gibraltar in the hands of the recipient if this person is ordinarily resident in Gibraltar. Dividends received by companies are not taxable in Gibraltar.

Interest income received by a company is not taxable unless that income is regarded as trading income. It is generally only deemed to be trading income if the recipient is money lending to the general public, or the interest is received on funds derived from deposit-taking activities as defined in the Financial Services (Banking) Act. However since July 2013, interest on loans made to companies in with common ownership (i.e. intercompany) will be treated as a trading receipt, accrued and derived in Gibraltar and therefore subject to tax. However there is an exemption where the interest charged is less than £100,000.

With effect from 1st January 2014, receipts from Royalties will be treated as a trading receipt, accrued and derived in Gibraltar and therefore subject to tax.

Trusts

Trusts may be formed in Gibraltar under the Trustee Act which allows (inter alia) discretionary powers to trustees. The perpetuity period in Gibraltar is a life in being and one hundred years.

Gibraltar trusts do not normally attract tax, however a trust resident in Gibraltar is charged tax at the rate of 30% on taxable income. A trust is deemed to be resident in Gibraltar where:

- it has one or more beneficiary who is ordinarily resident in Gibraltar, or
- where the class of beneficiaries, other than persons irrevocably excluded from benefit, may include a person who is ordinarily resident in Gibraltar, or
- the issue of such a person.

The capital of a trust is not liable to tax in Gibraltar.

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