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RELOCATING TO GIBRALTAR RESIDENCY & TAXATION

INTRODUCTION

The Gibraltar economy is well diversified and its main industries are finance, gaming, fintech, tourism and shipping, with Gibraltar being one of the busiest bunkering ports in Europe.

Gibraltar has had particular success with the online gaming industry, with the majority of the main players operating here. Online gaming certainly has put Gibraltar on the world stage as leading the globe in this area.

Moreover, Gibraltar has attracted a string of specialist business executives who relocate to Gibraltar because of the favourable tax regime and better quality of life that they may be able to take advantage of.

Relocating anywhere in the world can be fraught with difficulties not least the personal upheaval of moving you and your family abroad. This article will give you an insight some areas you should consider before choosing Gibraltar as your next destination.

This article is based on the law and practice in Gibraltar as at 8 February 2018 and is intended to provide a general guide only.

GIBRALTAR KEY FACTS

Geography and climate

Gibraltar 'the Rock', is a peninsula of approximately seven square kilometres at the southernmost tip of Spain. It is approximately five kilometres long and 1.2 kilometres wide, dominated by the famous rock which rises to 1,396 feet above sea-level at its highest point and towers above the Strait of Gibraltar, the strategic waterway which connects the Mediterranean and the Atlantic Ocean.

The coast of Morocco lies some 16 kilometres to the south across the Straits. The climate is Mediterranean.

Political system

The legislature of Gibraltar consists of the Governor and the Gibraltar Parliament. The Gibraltar Parliament consists of the speaker and at least 17 democratically elected members. Usually elections are held every four years.

Defence, foreign policy and internal security remain the responsibility of the United Kingdom, which appoints the Governor as the representative of the Crown in Gibraltar. In all other matters Gibraltar is self-governing. The power of the legislature to make laws is exercisable by Bills passed by the Gibraltar Parliament, known as Acts, and assented to by the Governor on behalf of her Majesty.

Whilst the executive authority vests in the Governor, it is the Chief Minister and usually nine ministers, with responsibility for defined domestic matters, who constitute the Government of Gibraltar.

Legal System

The legal system of Gibraltar is based on the common law and statute law of England and therefore embodies the advantages and security of English company and trust law. In 1962 Gibraltar passed the English Law (Application) Act declaring the extent to which English law is in force in Gibraltar.

The common law and the rules of equity from time to time in force in England apply to Gibraltar subject to any modifications or exclusions made by Her Majesty in Council, an Act of Parliament or an Act passed by the Parliament of Gibraltar. In all causes

or matters in which there is any conflict or variance between the common law and the rules of equity with reference to the same subject, the rules of equity prevail. The English Law (Application) Act further lists in its schedule the statute law of England that applies to Gibraltar.

Whilst the legal system is based on that of England, the statute law has developed differently in so far as the Gibraltar Parliament has enacted and amended laws to suit Gibraltar's own particular requirements. This can be seen in particular areas such as taxation and landlord and tenant law as regards the protection of the right of all Gibraltarians to a secure home balanced against the need for the development of Gibraltar as an EU Finance Centre.

Communication and travel

The official and commercial language of Gibraltar is English although the majority of the population are also fluent in Spanish.

Gibraltar has an excellent digital and fibre-optic telecommunications system along with a modern postal service.

There are daily scheduled air services to and from London Gatwick and London Heathrow. There are also weekly flights to and from Manchester, Bristol and Casablanca (via Tangier) (Morocco). A ferry service also operates to Tangier.

Gibraltar is also a port of call for container ships and some of the world's most prestigious cruise liners. A cruise liner terminal provides modern facilities for passengers.

Gibraltar is also within easy reach of the increasingly utilised airport of Malaga (Spain), which is a one-hour drive away.



European Union status

Gibraltar is a member of the European Union (EU) by virtue of Article 227 of the Treaty of Rome which states that the provision of the Treaty “apply to the European territories for whose external relations a member state is responsible”. Gibraltar is therefore treated as part of the member state of the United Kingdom.

Gibraltar is also part of the European Economic Area (EEA) by virtue of the Treaty of Accession. Entities established in Gibraltar can therefore take advantage of European rules on the free movement of services. As long as a Member State has implemented legislation giving effect to relevant European Directives, an entity in that Member State will be able to provide its services or operate throughout the EU and the EEA states.

Gibraltar entities enjoy passporting rights into the EU and the EEA single market in respect of investment services, insurance and banking. Additionally, Gibraltar entities are able to provide services within the EU which are not regulated by relevant directives provided they comply with the laws of that Member State. There is no other finance centre that can claim to have these advantages.

Gibraltar was placed on the Organisation for Economic Co-operation and Development (OECD) White List of territories that has substantially implemented the internationally agreed standard on tax information exchange.

Furthermore, the OECD’s Global Forum on transparency and exchange of information for tax purposes issued its Phase II report on Gibraltar, with an overall rating of “Largely Compliant” – the same rating as Germany, the UK and the US.

Education

This is modelled on the UK system with Comprehensive schools providing free compulsory education to National Curriculum standard to the children of people ordinarily resident in Gibraltar, up to age 15 and terminating in the examinations and coursework for the General Certificate of Secondary Education (GCSE).

Students may continue for a further two years to obtain their A-level examinations. Grants or scholarships are given for further study at UK universities and institutions of further education. Further, Gibraltar also recently opened its own university which offers a large range of further education courses.

Private schooling is also available in Gibraltar and in Spain.

Currency and exchange of controls

The official currency is Sterling. However, the Government of Gibraltar issues Sterling notes and coins locally which circulate alongside those issued by the Bank of England.

A number of local banks are linked into the United Kingdom clearing system. The Euro is also widely accepted.

There are no exchange controls and residents and non-residents alike may maintain accounts denominated in foreign currencies.

Time zone

Gibraltar time is the Greenwich Mean Time (GMT) plus one hour with clocks being advanced one hour between March and October.

Bank and public holidays

Public holidays include the 8 public holidays of England and in addition Commonwealth Day, the Queen’s Birthday, Gibraltar National Day and Worker’s Memorial Day.

Data protection

During 2004, Gibraltar transposed the EU directive relating to the protection of individuals with regard to the processing of personal data and on privacy rights of that data. The data Protection Act came into force in 2006. In general, with effect from 1 July 2006, all organizations that process and keep personal information must register with the Data Protection Commissioner. In addition such organizations must, inter-alia, ensure that the data is secure, accurate, for defined purposes only and accessible to those individuals where information is held about them.

Gibraltar has recently transposed the new General Data Protection Regulation that sets a higher standard of control and security measures that must be implemented by Data Controllers.

Medical services

The Medial Group Practice Scheme is funded by grant and by compulsory weekly contributions through social insurance. Not only are persons registered under the Scheme entitled to benefit but also the spouses and children of the registered person. In case of illnesses, which cannot be treated locally, patients will be sent for specialist treatment in the UK or Spain.

There are a number of doctors and medical centres which provide medical diagnosis and treatment. Private medical insurance is available through schemes such as the Hospital Savings Association (HSA), the British United Provident Association (BUPA) and a Le Carte Healthcare.

It is possible for a retiree that becomes resident in Gibraltar and was previously resident in the UK, and who has accumulated contributions in the UK to pass these contributions on to Gibraltar in order to benefit from Gibraltar’s public health system.

Leisure

Gibraltar has a state of the art sports facility which includes football pitches, paddle tennis courts, tennis courts, squash courts, gyms, hockey pitches, water sports facilities and more much.

It also has two stunning waterfront marinas which includes a casino, luxury residential properties, a five star luxury yacht hotel, bars, clubs and other leisure facilities.

Gibraltar is only a 20 minute drive away from the renowned Costa de Sol which includes towns such as Marbella which is well known for its beautiful beaches and for having some of the leading golf courses in Spain, such as Valderrama.

Travel and sightseeing

Gibraltar is rich in history and offers an array of attractions such as the upper rock, the Moorish Castle, St. Michaels Cave, the Great Siege Tunnels, the dolphin trips, the botanical gardens, commonwealth park and the Gibraltar museum to name a few.



RESIDENCY

Non-residents

An application for residency is made under Gibraltar's Immigration, Asylum and Refugee Act, which permits the Governor to issue the necessary permit to any person who, in his opinion, is of good character and to whom he considers that it is in the interests of Gibraltar to issue such a permit.

In practice the application is made to the Principal Immigration Officer whom the Governor appoints and who will exercise his discretion within the parameters of the Act and immigration policy in accordance with instructions from the Governor in consultation with the Government.

The Immigration, Asylum and Refugee Act recognises that EU nationals have certain rights to residency. If a person is self-employed or likely to remain in employment for twelve months, he is entitled to a permit of residence, which will usually be granted for twelve months and are renewable thereafter if their circumstances have not changed and they continue to meet the requisite criteria.

In addition, following the EU Rights of Residence Directive, all EU nationals have a right to reside. Even if they are not in employment they will successfully obtain a residence permit as long as they are able to satisfy the Principal Immigration Officer that:

- they will not become a public burden;
- they have a place to live; and
- they have private full-risk medical insurance for themselves and any dependents which extend to Gibraltar and that covers repatriation. (At the moment, only UK pensioners are accorded access to the Gibraltar Health Service.)

While the Immigration, Asylum and Refugee Act provides the basic requirements that must be satisfied for the issue of such a permit, the Government of Gibraltar has issued guidelines highlighting factors that are relevant in considering applications for residency. These can be briefly summarised as follows:

- (a) the purchase of a property sufficient in size to accommodate the applicant and all his family for residential purposes;
- (b) the applicant must establish that he is in good health;
- (c) the applicant must establish that he has adequate financial resources to maintain himself and his family without recourse to public funds.

Any person who obtains a Category 2 Individual certificate (further details of which are provided below) will have no difficulty in obtaining residence.

For non-EU nationals, for example US or Chinese Citizens, the application for residency is more difficult. Non-EU nationals do not have an automatic right of residence. Notwithstanding this, the Governor, under section 19(c) of the Immigration, Asylum



and Refugee Act, has discretion to grant a residence permit to any person who in the opinion of the Governor is of good character, where it would be in the interests of Gibraltar that such a residence permit should be granted. The duration of the permit is also left to the discretion of the Governor. However, being in possession of a work permit will be considered as highly advantages when making an application.

Applications under this section of the Immigration, Asylum and Refugee Act are generally reserved to non-EU individuals who are able to offer Gibraltar substantial benefits whether in investment, creation of employment or otherwise. Applications are made to the Governor via the office of the Administrative Secretary and Deputy Governor. The Government will be consulted on such applications.

An individual can apply for residency via one of the following three ways:

- Employee
- Self-employed
- Self-sufficient (including Cat 2s)

In order to apply for a Civilian Registration Card all applicants must submit the following documentation:

- Completed application form
- Certified copy of passport
- **Proof of address**
- **Proof of income/savings**
- Passport photo

Proof of address:

- Only deeds or rental agreements will be accepted as proof of address
- Utility bills will not be accepted

Proof of income/savings:

EU national employee

If you are in permanent employment then you must submit a copy of your Ministry of Employment Contract, accompanied by a letter from your employer stating that you are in employment.

Non-EU national employee

A valid work permit must be produced when applying for a Civilian Registration Card.

All self-employed

Persons who are registered as self-employed must submit their Business Name Registration Act certificate accompanied by a Certificate of Registration as a self-employed Person from the Income Tax Office. Receipt of payment of tax will also be required.

EU national self-sufficient

Proof of funds in the form of bank statements for the six months prior to the application or a valid Category 2 Individual Certificate.

Non-EU national Cat 2 individual

A valid Category 2 Individual Certificate must be submitted.

All self-sufficient and Cat 2 individuals must take out private medical insurance that covers treatment in Gibraltar. In order to be covered by private medical insurance the minimum requirements would be for policy benefits of at least £100,000 per year including in-patient and day-patient treatment in Gibraltar, the Spanish hinterland and the United Kingdom hospitals.



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TAXATION

The taxation of the income for both individuals and companies is governed by the Income Tax Act 2010 ("Tax Act"), Rules and Regulations. The Tax Act introduced a system of self-assessment that requires both self-employed individuals and companies to calculate their own tax liability for any year of assessment as well as make returns of their own income.

Classes of income

The Tax Act sets out the following classes of income:

TABLE A

The profits or gains of a company or a trust from any trade, business, profession or vocation

Any rents, premiums and any other profits arising from any interest in real property

TABLE B

Any office or employment, including any allowances, perquisites or benefits in kind specified in Schedule 7

Any trade, business, profession or vocation all or part of the activities, administration, marketing or support functions of which are performed in Gibraltar ¹

TABLE C

Class 1

Dividends except dividends paid or payable -

- (i) by a company to another company
- (ii) to a person who for the purposes of this Act is not ordinarily resident in Gibraltar
- (iii) by a company the shares of which are listed on a Recognised Stock Exchange
- (iv) out of profits or gains on which no tax has been charged in accordance with the provisions of this Act to the extent that the amount of the dividend represents the distribution of such profits or gains

Class 1A

Inter-company loan interest where the interest exceeds £100,000 per annum

Class 2

Funds income - in the case of a fund that is not marketed to the general public

Class 3

Income from any right to and interests in anything falling within Classes 1 and 2

Class 3A

Royalties received or receivable by a company - taxed at 10%

Class 4

Any pension, charge or annuity that is not maintenance, alimony or other payment to a husband, wife or child made in compliance with an order of court or by reason of a deed of separation or an agreement related to separation and that has not been granted tax relief by the Commissioner of Income Tax

Class 5

any profits or gains to be treated as income under the anti-avoidance clauses of the Tax Act

¹ Income derived from activities outside Gibraltar and that is remitted back to Gibraltar shall not be subject to tax



Companies

Companies are taxed on a territorial basis of taxation meaning that only income specified in Tables A to C that is accrued in or derived from Gibraltar will be subject to taxation in Gibraltar.

Corporation tax is 10% on assessable profits, after allowable expenses.

Persons other than companies

Persons other than companies, such as individuals and trusts, are chargeable to tax upon the income specified in Tables A to C on income accrued in and derived from Gibraltar. Persons ordinarily resident of Gibraltar are also chargeable to tax upon the income specified in Tables B & C on a worldwide basis.

Distributions made from a trust to a Cat 2 individual or non-resident will not be taxable in Gibraltar.

Personal tax rates will vary according to the level of income and allowances available, however, the effective rate of tax is approx. 25%.

Tax year and year of assessment

The tax year runs from 1 July to 30 June.

Individuals and trusts must prepare and file their tax returns from 1 July to 30 June of each year.

Companies must prepare and file their tax returns according to their financial year end. For example, a company with a 31 Dec year end must prepare and file its tax return from 1 January to 31 December and a company with a 30 June year end must prepare and file its tax return from 1 July to 30 June etc.

FILING DATES

Individuals

Individuals must file their tax returns by 30 November of each year following the end of that tax year.

Trusts

Trustees of a trust with income assessable to taxation in Gibraltar must file a trust tax return by 30 November of each year following the end of that tax year.

Companies

Companies must file their tax returns within nine months after the date of its financial year end.

PAYMENT DATES

Employees

Tax on the income from employment is deducted from wages and salaries under the PAYE system.

Self-employed & Cat 2 individuals

These individuals must make two tax 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 tax should be submitted with the individual's tax return and should be the tax liability for that year less the two tax payments on account made.

Companies

Companies are required to make two tax payments on account, by 28 February and 30 September, in each year and each payment on account should be 50% of the tax paid for a relevant accounting period as defined within the Tax Act. Final payment of tax 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.

VAT

There is no VAT in Gibraltar.

CAPITAL GAINS TAX

There is no capital gains tax in Gibraltar.

ESTATE DUTY

There is no estate duty tax in Gibraltar.

WEALTH TAX

There is no wealth tax in Gibraltar.

INHERITANCE TAX

There is no inheritance tax in Gibraltar.



CATEGORY 2("CAT 2") STATUS

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 £80,000 of assessable income (including worldwide income) meaning that a Cat 2 individual will pay a maximum of circa £29,000 tax per annum, subject to a minimum tax payable of £22,00 per annum (current rates).

Requirements for Cat 2 status

- Must have available for exclusive use approved residential accommodation in Gibraltar for the whole year of assessment (can be either purchased or rented).
- Must produce two independent references from recognised institutions/professionals (1 must be from a bank and the other from a law or accounting firm).
- Must produce valid passport and full CV.
- Must produce a statement of worth showing a minimum of £2m.
- Not have been resident in Gibraltar for 5 years immediately preceding the Cat 2 application.

A non-refundable application fee of £1,000 is payable on submitting an application.

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.

An individual in respect of whom a HEPSS certificate is issued shall be charged to tax on the first £120,000 of their assessable income only. This would mean that an individual with HEPSS status would pay a fixed rate of £29,940 tax per annum (current rates) regardless of how much they would earn from that employment.

Requirements for HEPSS

- Must have available for exclusive use approved residential accommodation in Gibraltar for the whole year of assessment (can be either purchased or rented).
- Possess skills that are necessary to promote and sustain economic value in Gibraltar.
- Possess skills that are not readily available in Gibraltar.
- Not have been resident in Gibraltar for 3 years immediately preceding the Cat 2 application.
- Earn more than £120,000 per annum from that employment.
- Must produce two independent references from recognised institutions/professionals (1 must be from a bank and the other from a law or accounting firm).
- Must produce valid passport and full CV.

A non-refundable application fee of £1,000 is payable on submitting an application.

CONCLUSION

There is not a one size fits all solution for every client and therefore careful consideration must be given to understanding a client's different needs and objectives. We would have to review the facts and circumstances of each client on a case by case basis to be able to provide the best advice in an efficient and thorough manner.

WHY ISOLAS

ISOLAS was established in 1892, making it the longest established firm in Gibraltar. Since then, and given our more than 120 years in the local legal profession, ISOLAS is today proud to be considered one of the leading law firms in Gibraltar. ISOLAS is consistently ranked as one of the leaders in the market by all major international directories.

ISOLAS is a full service Gibraltar law firm and can advise on the full range of Gibraltar laws including residency and taxation.

ISOLAS is also closely associated to the Fiduciary Group, a corporate and trust services provider licensed and regulated by the Gibraltar Financial Services Commission.

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