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Private Client 2013

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Gibraltar

Cruz & Co

Paul Louis Borge



1 Pre-entry Tax Planning

1.1 In Gibraltar, what pre-entry estate and gift tax planning can be undertaken?

Gibraltar is considered a low tax finance centre.

There is no specific estate tax, capital gains tax, wealth, gift or other capital taxes.

Tax is not paid on investment income, there is no inheritance tax and there are no exchange controls in Gibraltar.

1.2 In Gibraltar, what pre-entry income tax planning can be undertaken?

This depends to some degree on the type of status that the prospective Gibraltar resident is aiming to obtain.

If the applicant is choosing to enter Gibraltar and apply for High Net Worth Status or High Executive Possessing Specialist Skills (HEPSS) status (see the answer given to question 7.2 below for further information on these) then there could be significant tax advantages if income or dividends are deferred until such time as the status has been obtained.

1.3 In Gibraltar, can pre-entry planning be undertaken for any other taxes?

This is not applicable in Gibraltar.

2 Connection Factors

2.1 To what extent is domicile relevant to determine liability to taxation in Gibraltar?

Domicile is not a relevant factor for the determination of liability of income tax in Gibraltar.

2.2 If domicile is relevant, how is it defined for taxation purposes?

See question 2.1 above.

2.3 To what extent is residence relevant to determine liability to taxation in Gibraltar?

All persons deemed to be ordinarily resident in Gibraltar, are subject to taxation on their worldwide income.

2.4 If residence is relevant, how is it defined for taxation purposes?

As of 1 January 2011 an individual who stays in Gibraltar for 183 days in a tax year or more than 300 days in three consecutive tax years, is deemed to be ordinarily resident and therefore taxable in Gibraltar on his worldwide income.

2.5 To what extent is nationality relevant in determining liability to taxation in Gibraltar?

Nationality is not a relevant factor for the determination of liability of income tax in Gibraltar.

2.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable.

3 General Taxation Regime

3.1 What gift or estate taxes apply that are relevant to persons becoming established in Gibraltar?

There are no gift or estate taxes payable in Gibraltar and no tax is payable on interest or investment income received.

3.2 How and to what extent are persons who become established in Gibraltar liable to income tax?

Once a person becomes established in Gibraltar they are liable to pay income tax on their worldwide income.

There are two systems of calculations and the tax payer may elect to pay at the more favourable rate.

They are the: (i) Allowance Based System (which allows for certain allowances to be deducted from the gross income); and the (ii) Gross Income Based System.

(i) Rates for the Allowance Based System are as follows:

The first £4,000 of taxable income - 15%

The next £12,000 of taxable income - 30%

The remainder of the taxable income - 40%

with main allowances as follows: personal allowance (£2,812); spouse (£2,632); children (£997); children educated abroad (£1,105); nursery school allowance (£2,000); health insurance premiums (£1,500); life insurance premiums (100%); mortgage interest (100% up to maximum of £350,000); and home purchase for own residential occupation (£15,500).

(ii) Rates for the Gross Income Based System are as follows:

a. Tax rates for income up to £25,000 are:

First £10,000	6%
£10,001-£17,000	20%
Balance	28%

b. Tax rates for income above £25,000 are:

First £17,000	16%
£17,001-£25,000	19%
£25,001-£40,000	25%
£40,001-£105,000	28%
£105,001-£500,000	25%
£500,000-£700,000	18%
£700,001-£1M	10%
Balance	5%

The effective rate of tax is less than 25% for all current taxpayers in Gibraltar who have not got High Net Worth Status or High Executive Possessing Specialist Skills (HEPSS) status.

3.3 What other direct taxes (if any) apply to persons who become established in Gibraltar?

There are no other direct taxes payable in Gibraltar.

3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in Gibraltar?

There is no Value Added Tax in Gibraltar.

Import duties are payable on the importation of goods into Gibraltar and are mostly levied at rates of between 0%-12% depending on the goods.

Importation of the following goods into Gibraltar does not attract import duty: computers; TVs; electrical audio and visual equipment; software; biofuels; and paper and stationary made from recycled materials.

3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in Gibraltar?

Anti-avoidance provisions are contained in the Income Tax Act 2010.

There are general provisions that allow the tax authorities to act against avoidance generally and in particular: (i) there is a duty to notify the Commissioner of Income Tax regarding arrangements that reduce tax; and (ii) provision for the taxation of any income arising abroad on a structure which transfers out of Gibraltar profits which should be taxed in Gibraltar.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to direct taxes on the remittance of assets or funds into Gibraltar?

There are no direct taxes applicable to assets or funds remitted into Gibraltar and there is no tax on savings (interest) or investment income.

4.2 What taxes are there on the importation of assets into Gibraltar, including excise taxes?

The importation of assets and goods into Gibraltar are liable to duty and are mostly levied at rates of between 0%-12% depending on the goods.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

The purchase of residential property in Gibraltar over the amount of £200,000 is subject to stamp duty as follows:

Up to £200,000	nil.
Between £200,001 & £350,000	2% on first £250,000 and 5.5% on the balance.
Over £350,000	3% on first £350,000 and 3.5% on the balance.

5 Succession Planning

5.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in Gibraltar?

The law of succession in Gibraltar is governed by the Wills Act and the administration of estates is governed by the Administration of Estates Act.

With respect to an individual who dies domiciled outside of Gibraltar, the law differentiates between movable and immovable property.

In the case of movable property, the law of the country in which the deceased died, domicile is applied.

In respect of immovable property, the deceased must obtain probate in the country where the property is situated.

5.2 In particular are there particular rules that apply to real estate held in Gibraltar or elsewhere?

See answer given above in question 5.1.

6 Trusts and Foundations

6.1 Are trusts recognised in Gibraltar?

Trusts are recognised in Gibraltar and trust case law is well established.

The principle act is The Trustee Act.

6.2 If trusts are recognised in Gibraltar, how are they taxed in Gibraltar?

As of 1 January 2011 a trust is tax resident in Gibraltar if one or more of the beneficiaries is deemed to be ordinarily resident in Gibraltar, or the class of beneficiaries includes an ordinarily resident person.

A trust which is not tax resident in Gibraltar is taxable only on income which accrues in or is derived from Gibraltar.

Income received by any trust or beneficiary under the trust shall be exempt from tax where the trust is settled by or on behalf of a Category 2 individual (for further details on Category 2 status, see the answer to question 7.2).

6.3 If trusts are recognised, how are trusts affected by succession and forced heirship rules in Gibraltar?

There are no forced heirship rules in Gibraltar.

6.4 Are foundations recognised in Gibraltar?

In Gibraltar the word “foundation” is sometimes used in the title of a charity, but the term is not generally used in Gibraltar law, and (unlike in civil law systems) the term has no precise meaning.

Instead, the concept of a charitable trust is used.

6.5 If foundations are recognised, how are they taxed in Gibraltar?

A charitable foundation is exempt from paying income tax in Gibraltar.

6.6 If foundations are recognised, how are foundations affected by succession and forced heirship rules in Gibraltar?

This is not applicable.

7 Immigrations Issues

7.1 What restrictions or qualifications does Gibraltar impose for entry into the country?

Immigration and the right to enter Gibraltar are governed by the Immigration Control Act.

All persons registered as having Gibraltarian status or who are British Dependant Territory Citizens by virtue of their connection with Gibraltar are exempt from having to hold any permit or certificate of residence required by the Act.

European Economic Area (EEA) nationals are entitled to enter or remain in Gibraltar in any case in which they are entitled to do so by virtue of an enforceable European Community right e.g., workers. Initially they may stay in Gibraltar for three months after which time they will be granted a residence permit valid for five years which is renewable on condition that they have found suitable employment or established a business.

Other nationals require both work permits and residence permits. Residence permits may be granted at the Governor’s discretion to non-EEA nationals who do not have a work permit if he is satisfied that the applicants are of good character and that it is in the interests of Gibraltar.

An EEA national wishing to retire in Gibraltar may do so provided:

- i. they hold comprehensive private medical insurance;
- ii. they can show adequate financial resources; and
- iii. they have purchased adequate accommodation in Gibraltar.

7.2 Does Gibraltar have any investor and other special categories for entry?

High Net Worth Individuals

First introduced in 1992, the Government of Gibraltar provides a special tax category to high net worth individuals, who want to become Gibraltar tax residents.

Under the now Qualifying (Category 2) Individuals Rules 2004 an application to the Finance Centre Director can be made for a Category 2 Certificate if the following conditions can be satisfied:

- i. the applicant will have for his exclusive use approved accommodation in Gibraltar, (either rented or purchased);
- ii. the applicant has not been resident in Gibraltar for the five years previous to the application;
- iii. the applicant will not engage in local trade or business (although he or she can continue to manage all his business interests outside of Gibraltar from within Gibraltar);
- iv. the applicant can provide two character references from established professionals (one of which must be from a bank);
- v. pay an application fee of £1,000; and
- vi. demonstrate a net worth in excess of £2million.

The holder of a Category 2 certificate pays tax at the following rate:

- i. Only the first £80,000 of assessable income is taxable, (subject to a minimum tax payable of £22,000 and a maximum of approximately £30,000).
- ii. In essence all assessable income over £80,000 can be received tax free.
- iii. A certificate holder can elect to declare his worldwide income and that of his spouse in Gibraltar.

High Executives

Another special tax status afforded to qualifying applicants is known as High Executive Possessing Specialist Skills (HEPSS).

Introduced in 2007, a person afforded HEPSS status only pays tax on the first £120,000 of earned income, which equates to £29,940.

The following conditions must be satisfied for a successful application:

- i. approved accommodation for the exclusive use of the applicant (rented or purchased);
- ii. non Gibraltar resident for three years preceding the application; and
- iii. must possess skills that are not available in Gibraltar and which are necessary to promote and sustain economic activity of interest to Gibraltar.

7.3 What are the requirements in Gibraltar in order to qualify for nationality?

Gibraltar is an overseas territory of the United Kingdom.

The citizens of Gibraltar, although British Overseas Territories citizens, may apply for registration as a British citizen (an entitlement that cannot be refused) under section 5 of the British Nationality Act 1981 and are considered UK Nationals for EU Community purposes with all consequential rights and entitlements.

Foreign individuals may apply for naturalisation as a British citizen if:

- i. they are 18 years or over;
- ii. have been living in Gibraltar for the past five years and have permanent residence there;
- iii. do not have a criminal record; and
- iv. have a command of the English language.

7.4 Are there any taxation implications in obtaining nationality in Gibraltar?

Nationality is not a determining factor for tax liability.

All Gibraltar nationals resident in Gibraltar are required to pay income tax in Gibraltar on their worldwide income.

8 Taxation of Corporate Vehicles

8.1 What is the test for a corporation to be taxable in Gibraltar?

A Gibraltar company is liable to pay tax on its income that is accrued and derived in Gibraltar.

The corporate rate of tax in Gibraltar is 10%.

Income which is accrued or derived outside of Gibraltar is not liable to taxation in Gibraltar.

8.2 How are branches of foreign corporations taxed in Gibraltar?

A branch will be taxable in the same way as a normal Gibraltar company, see question 8.1 above.

Profits accrued and derived by branches of Gibraltar companies in another jurisdiction are not liable to Gibraltar corporation tax on those profits generated outside of Gibraltar.

Gibraltar has implemented the Parent/Subsidiary Directives on dividends, interest and royalty payments so that no tax or withholding taxes apply on dividends, royalty and interest payments paid between associated companies within the EU. In the case of dividends, a Gibraltar company holding directly or indirectly a relevant participation (an interest in the voting share capital equal to at least 10%) of a company registered in another Member State, does not pay corporation tax on any income derived from that company and any dividends paid by a Gibraltar registered company to a company in another Member State do not suffer withholding tax.

No tax is payable on royalties and interest, nor is there a requirement to withhold at source, where the holding in the voting share capital is of a minimum of 25%.

9 Tax Treaties

9.1 Has Gibraltar entered into income tax and capital gains tax treaties and, if so, what is their impact?

Gibraltar has not entered into any Double Tax Treaties with other countries, but has some arrangements with the UK for avoiding double taxation of income.

In practical terms, however, a Gibraltar resident who is in receipt of income which is liable to tax in Gibraltar that is derived from and has already paid tax in any other jurisdiction, shall be entitled to double taxation relief in Gibraltar in respect of that income, of an amount equal to the tax already deducted or the Gibraltar tax, whichever is the lesser.

In accordance with its OECD commitments, the Gibraltar government has signed a total of 21 Tax Information Exchange Agreements (TIEAs) with the following countries: Australia; Ireland; Belgium; Iceland; Sweden; Faroe Islands; Finland; Greenland; Germany; Netherlands; Norway; Portugal; France; Austria; Denmark; United Kingdom; New Zealand; South Africa; Italy; Malta; and USA.

9.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

This is not applicable.

9.3 Has Gibraltar entered into estate and gift tax treaties and, if so, what is their impact?

Estate Duty was abolished with effect from 1 April 1997 and Gibraltar has not entered into any estate or gift tax treaties.

There is no gift tax payable in Gibraltar.

9.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.



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Paul Louis Borge, BA (Hons) was born in London and educated at Worth Abbey in the United Kingdom. He read law at Derby University then joined the Honourable Society of Gray's Inn before completing his professional studies at the Inns of Court School of Law, London. He was called to the Bar of England and Wales in 1998 and called to the Gibraltar Bar in the same year. Paul joined local chambers where he undertook pupillage and joined Cruz & Co as an associate in 1999. He subsequently spent four years with another leading firm before taking partnership at Cruz & Co in 2004. His main practice areas are company, commercial law and private client advice.



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