

GIBRALTAR INCOME TAX ACT 2010

SUMMARY OF KEY CHANGES



On 16 June 2010 the Government of Gibraltar published the text of a new Income Tax Act which it intends to pass into law in the autumn and which will be effective as from 1 January 2011. The Act and explanatory documents have been published as a brief to allow for comments in writing to the Chief Minister during the period up to 23 July 2010. Thereafter the text, as amended following this consultation period, will be formally published as a Bill for presentation in Parliament during October 2010.

This document represents the culmination of a tax reform process which commenced over a decade ago when the European Commission ruled that the existing Company Tax system in Gibraltar constituted "Unfair Tax Competition" because it discriminated between onshore and offshore businesses. On 31 December this year the tax exempt regime for offshore companies will come to an end. Under the New Act the standard rate of Company Tax will be set at 10% and this will apply to all income earned in and derived from Gibraltar. Together with the international tax information exchange agreements being entered into by the Government, Gibraltar's full integration in the EU and compliance with EU financial services regulation, money laundering and co-operation rules, the new Tax Act completes Gibraltar's transition from tax haven to mainstream European financial services centre.

SUMMARY OF THE KEY CHANGES

- Standard rate of Company Tax reduced from 22% to 10%. However, utilities, and companies which take advantage of a dominant market position, will be subject to tax at the rate of 20%.
- The territorial basis of taxation for Gibraltar companies is preserved and income accrued or derived outside Gibraltar by Gibraltar companies is not subject to Company Tax.
- Interest income (other than trading interest) and royalties are not subject to tax.
- Tax losses arising under the old Act can be carried forward and offset against profits assessable under the new Act.
- Capital gains will continue to be excluded from taxable profit (capital gains remain free from taxation).
- System of self-assessment for self-employed and companies introduced.
- Companies and the self-employed to be taxed on a 'current year' basis and to make payments of tax on account during the year.

- **Definition of residence for individuals amended.**

An individual will become ordinarily resident in Gibraltar if he/she is present in Gibraltar for at least 183 days in a year of assessment or over 300 days in a period of three consecutive years of assessment. 'Presence' in Gibraltar is defined as 'any part of a 24 hour period commencing at midnight' whether or not accommodation is used in Gibraltar. Therefore individuals who live in Spain and work in Gibraltar will become ordinarily resident in Gibraltar. Individuals who are ordinarily resident are subject to tax on their world-wide income.

- Only expenses which are wholly, **necessarily** and exclusively for business purposes will be deductible. Business entertainment will only be deductible if it falls within specific rules.

- Rules in respect of capital allowances are amended to allow for assets to be pooled. Writing down allowances are reduced to 10% per annum (Utilities – 20%). Private motor vehicles will not qualify for capital allowances.

- Benefits in kind are defined and quantified more clearly to enable them to be properly taxed. The taxable benefits arising from the provision of company cars, living accommodation, employee and director loans, vouchers and tokens, and expense payments have been clarified in detail.

- **Returns of income**

Companies to file a return of income together with payment of (the balance of) tax due within six months of the end of the accounting period. Other persons to file and pay within five months of the end of the tax year i.e. by 30 November.

- **Anti-avoidance**

The new Act incorporates very extensive anti-avoidance clauses. Apart from a generic anti-avoidance clause there are provisions covering thin capitalisation, deemed dividends, back to back loans, dual employment contracts, transfer of assets abroad and transactions with connected persons.

- Promoters of tax-saving schemes or proposals will be required to notify the Commissioner of Income Tax of the proposed arrangements within thirty days of making the proposal.
- Tough penalties and surcharges introduced and the most serious abuses will be dealt with on a criminal basis.
- The Commissioner of Income Tax will have wide information-seeking powers and, in serious cases, will be able to apply for a search warrant from the Supreme Court.
- The Commissioner of Income Tax will have powers to publicly “name and shame” those who do not pay over PAYE and other liabilities deducted from employees.

- **Transitional provisions**

There are detailed and complex provisions covering the transition from the old Act to the new one. Most companies and businesses (other than those already on a current year basis of assessment) will be treated for tax purposes as having ceased trading on 31 December 2010 and re-commenced on 1 January 2011.

For full details of the New Income Tax Act, visit our website www.bakertillygibraltar.gi

If you require further information or clarification please do not hesitate to contact us.