

Gibraltar and United Kingdom sign Double Taxation Agreement

News Flash
Gibraltar Tax
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In brief

On 17 October 2019 it was announced in the United Kingdom Parliament the signing of a Double Taxation Agreement (“the Agreement”) between the Government of the United Kingdom and Gibraltar. The Agreement which is based on the OECD Model Tax Convention was signed in London on 1 October 2019 and in Gibraltar on 15 October 2019.

The purpose of the Agreement is to eliminate double taxation with respect to taxes on income and capital and prevent tax evasion and avoidance.

This article summaries the key points and changes to the current position. It is intended to provide a general guide only to the subject matter and is necessarily in a condensed form, it should not be regarded as a basis for ascertaining the liability to tax in specific circumstances. Professional advice should always be taken before acting on any information in the booklet.



In detail

The main contents of the Gibraltar/United Kingdom taxation agreement and its impact from the Gibraltar tax perspective

Residency

Article 4 states that for the purposes of the Agreement the term “resident of a territory” is a person who under the laws of that territory, is liable to tax therein by reason of their domicile, residence, place of management, incorporation or any other criterion of a similar nature, and includes the territory together with any political subdivision or local authority thereof. The term does not include any person who is liable to tax in that territory in respect only of income or capital gains from sources in that territory. The term also includes a pension scheme established in that territory and religious, charitable, scientific and cultural organisations resident in that territory.

Individuals resident in both territories will be considered resident only in the territory where they have a permanent home and if they have permanent homes in both territories then they will be resident only in the territory where the personal and economic relations (centre of vital interests) are closer. If the centre of vital interests cannot be determined or the individual does not have a permanent home in that territory they will be deemed resident in the territory where they have a habitual abode. If the individual has a habitual abode in both territories or in neither of them, the competent authorities will settle the question by mutual agreement.

Permanent Establishment

Article 5 introduces the standard OECD definition of permanent establishment (“PE”) which means a fixed place of business through which the business of an enterprise is wholly or partly carried on. A PE includes (i) a place of management (ii) a branch (iii) an office (iv) a factory (v) a workshop (vi) a mine, oil or gas well, quarry or any other place of extraction of natural resources and (vii) a building site or construction or installation project if it lasts more than twelve months.

A PE does not include the use of facilities solely for the purpose of storage, display, delivery or maintenance of goods or merchandise belonging to the enterprise except where the fixed place of business is used by an enterprise or a related enterprise which has a PE in that territory.

Also excluded is the maintenance of a fixed place of business solely (i) for the purpose of purchasing goods or merchandise or collecting information for the enterprise and (ii) for the purpose of carrying on, for the enterprise, any activity of a preparatory or auxiliary character.

Business profits

Article 7 provides that profits of an enterprise shall be taxable only in that territory unless the enterprise carries on business in the other territory through a PE. This is different to the current Gibraltar charging provisions which require that income which has accrued in and is derived from Gibraltar be taxed in Gibraltar regardless of whether a PE has been established. This is likely to remove some activities carried out by UK enterprises from the scope of Gibraltar taxation.



Dividends

Article 10 prevents the territories from imposing the obligation for any withholding tax on dividend payments except where the dividends are paid out of income and gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of its income annually and whose income is exempt from tax. In this case with the exception of where the beneficiary is a pension scheme (in which case no withholding tax applies) the maximum withholding tax to be applied is 15%.

It should be noted however, that there is currently no requirement to deduct withholding tax from dividends in both the UK and Gibraltar. Therefore, dividends will continue to be paid gross, regardless of the terms of any tax treaty/agreement.

Interest and royalties

Articles 11 and 12 prevent the territories from imposing the obligation for any withholding tax on interest and royalty payments to entities and individuals resident in the other territory. This is subject to anti treaty-shopping clause which disapplies the benefit to companies where the direct or indirect ownership in the company receiving the interest or royalties comprises over 25% non-residents.

There is no change to the position regarding payments of interest or royalties from a Gibraltar company since there is no obligation under Gibraltar domestic legislation for a Gibraltar company to withhold tax on interest or royalties. From a UK perspective, these articles remove the requirement to withhold tax at the non-treaty rate (currently 20%) on the payment of royalties and interest to Gibraltar residents.

Employment Income

Article 14 of the Agreement provides that the employment income of an individual resident in one territory will be subject to tax only in that territory unless the employment is exercised in the other territory. However, where the individual is present in the other territory for less than 183 days and the remuneration is paid by a non-resident employer and not borne by a local permanent establishment then the income is taxed only in the first mentioned territory.

This represents a change as currently a UK resident individual working in Gibraltar is taxable on the portion of the income that derives from their Gibraltar employment activity except where the employment duties are ancillary to their main UK employment and they have spent less than 30 days in Gibraltar in a tax year.

Elimination of double taxation

Article 22 of the Agreement provides for the elimination of double taxation via a tax credit.

Entitlement to benefits

Article 28 introduces the standard Principal Purpose Test denying the benefits of the Agreement to scenarios where obtaining the benefit was the principal purpose of the arrangement.

Exchange of information/Assistance in collection of taxes

Under Articles 25 and 26 both territories agree to assist each other by (i) exchanging information relevant for the purposes of the Agreement and (ii) in the actual collection of revenue claims. Under the Agreement the competent authority will upon receipt of a request use the applicable laws to collect the tax as if the revenue claim was its own.



Entry into force

The Agreement will enter into force when both jurisdictions have completed their legislative procedures and exchanged their diplomatic notes. The Agreement will enter into force on the date of the later of these notifications and shall thereupon have effect as follows:

	In Gibraltar	In United Kingdom
Taxes withheld at source	For amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force.	For amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force.
Capital gains tax (UK only) and income tax	For any year of assessment beginning on or after 1 July following the date of entry into force of the Agreement.	For any year of assessment beginning on or after 1 April following the date of entry into force of the Agreement.
Corporation tax	For any financial year beginning on or after 1 July next following the date of entry into force of the Agreement.	For any financial year beginning on or after 1 April next following the date of entry into force of the Agreement.

Termination

The Agreement will remain in force until terminated by one of the territories. Either territory may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of 5 years from the date of entry into force of the Agreement.

Contact us

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