

Gibraltar Tax Facts 2010/2011

This publication is a practical and easy-to-follow guide to the Gibraltar tax system.

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This booklet is also available online at www.pwc.gi

A list of PricewaterhouseCoopers Gibraltar contacts is provided in the back of this guide should you require more detailed advice or assistance tailored to your specific needs.

The booklet is based on taxation law and practice in Gibraltar as at 1 July 2010 and includes proposed changes to the Income Tax Act which have yet to be enacted.

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.

While every effort has been made to ensure accuracy, information contained in this publication may not be comprehensive or may have been omitted which may be relevant to a particular reader.

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New Income Tax Act

On 16 June 2010, the Gibraltar Government published the text of the new, amended and consolidated Income Tax Act under cover of a pre-legislative briefing paper. The new Act paves the way for the introduction of a low rate of corporate tax of 10% across the board and the end of the exempt tax regime.

The Bill was formally published on 2 September 2010 with the intention for it to be passed through Parliament in October 2010 and with the legislation becoming effective as from 1 January 2011.

The main changes are summarised below.

Territorial basis of taxation

There is no change in the new Act in respect of the existing territorial basis of taxation which means that generally only income which has “accrued in and derived from” Gibraltar is taxable in Gibraltar.

The “accrued in and derived from” principle is however softened for individuals that carry out activities in Gibraltar which are ancillary to their employment or self employment elsewhere provided the duration of such activity is less than 30 days in aggregate in any year of assessment. These individuals will not suffer tax on the income from their activities in Gibraltar.

Increased investigative powers

The Commissioner will be granted increased powers for the purposes of investigating tax returns. Under the new Act the Commissioner may also request information to satisfy any international exchange of information obligations.

Change of definition of residence

There is no change in the definition of corporate residence which continues to be established by reference to the location of the company’s central management and control. The definition of residence for individuals will change, the main difference being the introduction of a day count of 183 days in any tax year and over 300 days in aggregate over three consecutive years of assessment.

Change in the basis of taxation

Income will no longer be assessed on the basis of the prior year.

There is no change in the basis for employees who will continue to be assessed on an actual basis.

For individuals (other than in respect of employment income), partnerships and sole traders there is no longer a choice available for the financial year end of the trade, as under the new Act they will need to draw up their financial accounts to 30 June.

Companies still have the freedom to choose their financial year end. However there is no longer any reference to a year of assessment.

New Income Tax Act

Exempt Income

Under the new act tax on interest, dividends and royalties will be abolished.

Introduction of self assessment and filing due dates

The new Act introduces the concept of self-assessment with new filing due dates as well as penalties and fines for non-compliance (see page 20).

Anti – Avoidance

Like the existing Act, the new Act contains a generic anti-avoidance clause which allows the Commissioner to disregard an arrangement which he believes is fictitious or artificial.

In addition it introduces specific anti-avoidance measures including:

- Thin Capitalisation rules
- Transfer pricing legislation
- Back to back loans
- Dual employment contracts
- Transfer of assets abroad
- Head office charges

The new Act also requires that promoters of tax planning schemes notify the Commissioner within 30 days of any schemes which result in the payment of less tax. The Commissioner will decide whether the scheme is in the spirit of the Act and whether legislation is required to prevent it.

Transitional rules

Complex transitional rules have been introduced in order to accommodate the change in the basis of taxation.

Cessation rules will be applied as at 31 December 2010.

For companies in transitional years, the Act contains a table showing when and what the basis payments on account will be and when they will be due and payable.

With respect to capital allowances, under the new Act companies which were previously tax exempt will take the closing net book value of their assets as the value of the opening pool available for allowances. For existing tax payers, the amount will be the tax written down value at the date of entry of the new legislation.

Budget Summary

Below is a summary of the key taxation changes to the existing Income Tax Act as a result of the Chief Minister's budget speech on 1 July 2010. These changes are effective as from 1 July 2010.

Social Insurance

- Employer's social insurance contributions have increased by 10% to a maximum of £32.97 per week.
- Employees' social insurance contributions have increased by 6% to a maximum of £25.16 per week.
- Married women contributions have increased by 6% to a maximum of £13.10 per week.
- Voluntary contributions have increased by 6% to a maximum of £13.71 per week.
- There is no change to minimum contribution rates.

Allowance Based System

- All personal allowances have increased by 2.8%.

Gross Income Based System

- Income less than £8,000 p.a. is exempt from tax.
- Where gross income is less than £16,000 p.a. the rate of tax on the first £10,000 of income is reduced from 10% to 8%, with the balance payable at 20%.
- Where income is between £16,000 and £25,000 p.a. there is an additional £1,000 of tax free income.
- Where income is between £25,000 and £35,000 p.a. the maximum effective rate is 20%.
- Where income is between £35,000 and £100,000 p.a. the maximum effective rate is 26.25%.
- The top band rate of 35% has been abolished.
- The balance of income in excess of £353,000 is taxed as follows:
 - From £353,001 to £704,800 at 20%
 - From £704,801 to £1 million at 10%
 - Excess above £1 million at 5%

Budget Summary

Retirement Annuity Contracts and Personal Pension Schemes

- Tax relief on retirement annuity contracts and personal pension schemes is limited to 20% of earned income or £35,000, whichever is less, from 1 July 2009.

Stamp duty

- The lower threshold for stamp duty has been increased to £200,000. No stamp duty is payable on real estate transactions where the consideration is less than this amount.
- For transactions with consideration of between £200,000 and £350,000 the rate is 2% on the first £250,000 and 5.5% on the next £100,000.
- For transactions with consideration of above £350,000 the rate is 3% on the first £350,000 and 3.5% on the balance.

Category 2 status

- The minimum amount of tax payable by Category 2 individuals is increased from £20,000 to £22,000. The maximum amount of their income on which they will be liable to tax increases from £70,000 to £80,000.

High Executives Possessing Specialist Skills (HEPSS) status

- Income that is chargeable to tax has increased from £100,000 to £120,000.

Import duty

- Import duty on pedal bicycles, electric cars and solar panels and related equipment is reduced to zero.
- Import duty on two stroke engines is increased to 30% with a reduction from 30% to 15% for four stroke engines.
- Import duty for dealers in motor vehicles has increased as follows:
 - Less than 1500cc by 2.5% to 15%
 - 1500cc to 2000cc by 3% to 18%
 - Over 2000cc by 4% to 22%

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Who is liable to taxation in Gibraltar?

Income tax is charged on income accruing in or derived from Gibraltar. Also, as from 1 January 2011 the “accrued in and derived from” principle is softened for individuals which carry out activities in Gibraltar for a period of less than 30 days in aggregate during the year of assessment, so that such individuals will not suffer tax on the income from their activities in Gibraltar.

Income tax is also charged on certain income, accruing in, derived from or received in any place other than Gibraltar by any person ordinarily resident in Gibraltar. Ordinarily resident means an individual who, irrespective of whether such individual is domiciled in Gibraltar or otherwise, resides in Gibraltar except for reasonable temporary absences. An individual who is a British subject or citizen of the Republic of Ireland who is employed in Gibraltar and resides in the surrounding area is also considered ordinarily resident. As from 1 January 2011, the definition of residence for individuals will change and will include reference to a day count, of 183 days in any tax year and over 300 days in aggregate over three consecutive years of assessment.

Gibraltar has introduced a number of tax incentives which allow certain categories of resident individuals to limit the total tax payable in any tax year, subject to certain criteria being met (see page 14).

Corporate residence

A company will be considered resident in Gibraltar if the management and control of its business is exercised from Gibraltar.

The location of central management and control is established under legal principles laid down in the United Kingdom and is the place of the highest form of control and direction over a company’s affairs, as opposed to decisions on the day-to-day running of the business.

Tax year and basis of assessment

Tax is currently charged for the year of assessment (running from 1 July in one calendar year to 30 June in the next) on the basis of the income of the preceding year except for income from employment which is charged on the basis of the income for that year.

Rules on commencement

For companies that commenced trading prior to 1 January 2008 complex commencement rules apply in order to transfer the company on to a preceding year basis of assessment for taxation.

Start up relief

A “start up” rate of 10% applies to any business established in Gibraltar after 1 July 2009.

Companies are taxed on an actual current basis for the period from commencement of trade to 30 June 2010 with a second tax period to 31 December 2010.

As from 1 January 2011, the new Income Tax Act will apply.

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Rules on cessation

Any company whose profits are currently charged to tax on a prior year basis will need to apply the following rules on cessation of trade:

Tax Year	Basis of assessment
Last	Start of the tax year to the date of cessation of trade.
Penultimate	The greater of the profits of the penultimate year or the pre-penultimate year.

On 1 January 2011 the preceding year basis of assessment will be abolished in favour of an actual basis. All companies currently subject to taxation in Gibraltar under the preceding year basis will be required to apply the cessation rules as at 31 December 2010. The transitional rules are covered in detail in the new Act.

Partnerships

An assessment is made on the partners in respect of their share of partnership profits up to 31 December 2010. The income is assessed on a prior year basis after adjustments.

As from 1 January 2011 the basis of taxation for partnerships will change as they will be taxed on the basis of current year profits.

In addition any accounts required to be submitted with a tax return must be made up for the year from 1 July to the 30 June of the following year.

Branches

Currently, the basis for taxation of branches of foreign enterprises is the same as for companies i.e. assessed on a prior year basis after adjustments.

As from 1 January 2011 the basis of taxation for branches will change as they will be taxed on the basis of current year's profits.

Trusts

A trust is considered resident in Gibraltar where it has one or more beneficiaries who are ordinarily resident for tax purposes in Gibraltar (excluding Category 2 individuals). A Gibraltar resident trust is subject to taxation in Gibraltar.

A Gibraltar trust which has non-resident beneficiaries is not subject to taxation in Gibraltar and all of its income (with the exception of income from a trade which has accrued in and derived from Gibraltar) may be accumulated free of tax in Gibraltar.

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Taxable income

Income tax is charged on:

- Gains or profits from any trade, business, profession or vocation;
- Gains or profits from employment including any allowances, perquisites or benefits in kind;
- Rents, premiums and any other profits arising from property;
- Dividends, see page 8;
- Interest, see page 8;
- Royalties, see page 9.

As from 1 January 2011, where assets are transferred abroad with the purpose of avoiding taxation and the taxpayer has the power to enjoy these assets either now or in the future then any income or benefits received from these assets will be deemed to be income chargeable to tax. This provision does not apply if the transaction is bona fide and not designed for the purpose of avoiding tax.

With the exception of dividends, interest, pensions or emoluments of office, income which is not accrued in or derived from Gibraltar is not taxed in Gibraltar. Specifically, income derived from the following categories will not accrue in or derive from Gibraltar for the purposes of the Income Tax Act:

- The letting of property where that property is outside Gibraltar;
- Trading in future delivery contracts for the purchase and sale of commodities in markets outside Gibraltar with parties outside Gibraltar;
- Salvage operations taking place outside the jurisdiction;
- The oversight of a construction operation outside Gibraltar;
- The lending of money outside Gibraltar (except for Gibraltar banks and money lenders).

Where a taxpayer seeks to reduce their liability to tax by creating an artificial split between activities in Gibraltar and outside the Commissioner shall use the anti-avoidance provisions of Section 13 of the Income Tax Act and any other means to defeat such an attempt.

In addition, as from 1 January 2011, income from dual employment contracts will be taxed in Gibraltar where the two employers are connected persons. Bona fide arrangements where the purpose is not to avoid tax is a defence to the provision.

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Dividends

Except in the case where the income forms part of the company's trading receipts, dividend income from shares listed on a recognised stock exchange is not taxable in Gibraltar.

Dividends received from participating interests or from any subsidiaries in the participating interest group are not liable to taxation in Gibraltar. A participating interest exists where there is a direct or indirect shareholding of at least 10% in a company registered in the EU (or a company which is registered in a country which has a bilateral agreement with the EU).

There is no tax on dividends paid by one Gibraltar company to another.

There is no liability to tax on dividends paid by a Gibraltar company to a person who is not resident in Gibraltar.

There is no withholding tax on dividends paid. However a company must submit a return of any dividend paid within 30 days following the end of each year of assessment.

As from 1 January 2011, there will be no charge to tax on the receipt by a Gibraltar company of dividends from any of its subsidiaries, regardless of where incorporated.

Additionally, Gibraltar companies (with the exception of companies whose shares are listed on a recognised stock exchange) shall within one month of declaring a dividend in favour of a Gibraltar resident individual or company, file a return.

Interest

Except in the case where the interest income forms part of the company's trading receipts, interest received from financial institutions is not taxable in Gibraltar.

Where the situs of a loan is outside Gibraltar there is no source of income which would give rise to a liability to tax in Gibraltar in respect of the interest received on that loan.

The situs of a loan will depend upon:

- The place of residence of the debtor;
- The source from which the interest is paid;
- The place where the interest is paid;
- The nature and location of the security for the debt.

Unless there are compelling reasons to the contrary, where loans are primarily secured on assets situated in Gibraltar, they are likely to have their situs in Gibraltar.

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Currently, the Income Tax Act requires that companies withhold tax at the standard rate on the payment of mortgage or debenture interest or interest on any loan advanced to the company for capital purposes. This requirement is extended to payments of interest on any loan charged on the Consolidated Fund. Reference to the standard rate of tax is in respect of the person to whom interest is paid (currently this is 30% for individuals and 22% for companies). Where there is no liability to tax on interest paid there is also no duty to withhold tax.

Additionally whether or not there is a liability to tax in Gibraltar there is no liability to withholding tax in respect of payments of interest made to recognised banks situated in Gibraltar.

As from 1 January 2011, interest, except where it is an integral part of the company's revenue stream (e.g. banks, finance or money lending companies) will no longer be taxable.

For companies where interest is considered "a trading receipt" no tax shall be charged on the net interest receivable from deposits received from related parties to the extent that these funds do not themselves generate interest income from money lending activities to third parties.

Royalties

Although the income from certain royalties is taxable under the existing legislation, under the new Act, income tax on royalties is abolished.

Exempt income

The main types of exempt income are summarised below:

- Interest income from a bank, building society or other financial services institutions licensed to take deposits;
- Dividends received from a company the shares of which are quoted on a recognised stock exchange;
- Dividends paid to non Gibraltar resident individuals;
- Dividends satisfying the conditions of the Parent and Subsidiary Rules 2008;
- The income of a friendly society, sporting club, or ecclesiastical, charitable or educational institution or trust of a public character;
- Compensation for unfair dismissal and sums paid upon redundancy which have been approved as appropriate by the Commissioner;
- The investment income of any pension fund, provident fund or other fund established in Gibraltar, and approved by the Commissioner;
- The income of the Government Savings Bank;
- The income received by any trust or beneficiary where the beneficiaries are all non Gibraltar resident (this exemption also applies to Category 2 Qualifying Individuals, see page 14);

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- The profits of an exempt company (see page 17) and the dividends or interest payable by such a company to its own members;
- Any income arising out of Gibraltar and received therein by a non-resident individual in Gibraltar for some temporary purpose;
- Pensions received from an approved occupational pension scheme by individuals aged 60 or over (see page 15);
- The gains or profits derived by a non-resident owner or charterer or operator of ships or aircraft for the carriage of passengers or cargo to or from Gibraltar in any ship or aircraft owned or chartered or operated by them;
- The income accruing to a life fund maintained by a life assurance company in so far as the retention of the income within the fund is necessary to maintain the fund at the level required by the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations, 1996;
- Income received by a student from employment during vacation.

Deductions allowed

For the purpose of ascertaining the assessable income there shall be deducted all outgoings and expenses wholly and exclusively incurred in the production of the income.

As from 1 January 2011 in the case of a person who has income some of which is chargeable to tax and some of which is not, the deductions allowed shall be apportioned on a pro-rata basis between the chargeable and non-chargeable income.

Business entertainment expenses are not allowable unless they fall within specific rules to be published by the Commissioner.

No deduction shall be allowed in respect of:

- Domestic or private expenses;
- Expenses not incurred wholly and exclusively in the generation of income;
- Any expenses of a capital nature;
- Any sum recoverable under an insurance contract or contract of indemnity;
- Property expenses not incurred for the purposes of producing income;
- Any tax charged under the Income Tax Act;
- Depreciation of assets (although capital allowances are available, see page 11);
- Employee remuneration not accompanied by a certified statement of names, addresses and amount of remuneration;
- Interest paid on a back to back loan or a loan secured by a connected person;
- General head office expenses which exceed 5% of turnover.

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Capital allowances

The first £30,000 of qualifying expenditure on plant and machinery (including fixtures and fittings) acquired in a year of assessment is fully deductible with the balance deductible at the rate of 25% per annum on a straight line basis.

The first £50,000 of qualifying expenditure on information technology investment is fully deductible with the balance deductible at the rate of 25% per annum on a straight line basis.

Expenditure on motor vehicles which does not qualify as plant and machinery is deductible at the rate of 25% per annum on a straight line basis.

Expenditure on industrial buildings attracts an allowance of 4% per annum on a straight line basis.

Capital payments for leases which are for periods of less than 12 years qualify for capital allowances on a straight line basis over the remaining period of the lease.

As from 1 January 2011 the concept of “pooling” of allowances will be introduced.

The first year allowance of £50,000 for computer equipment and £30,000 for plant and machinery (including fixtures and fittings) is retained.

Capital or wear and tear allowances are available for plant and machinery (including fixtures and fittings), computer equipment and motor vehicles at the rate of 15% for companies and 20% for individuals and companies that are obliged to pay the higher rate of corporate tax (see page 16) and are calculated on a reducing balance basis. Capital allowances for industrial buildings remain the same.

Losses

A trading loss incurred in an accounting period may be offset against trading income, if any, arising in the same period or subsequent periods.

If, however, within any period of three years there is both a change in ownership and a major change in the nature and conduct of a trade carried on by a company, trading losses may not be offset against trading income arising in the same or subsequent periods.

There is no provision for the carrying back of losses.

Group Relief

There is no group relief available in Gibraltar.

Charge to tax

Individuals have the choice of being taxed under either an allowance based system or under a gross income based system and will pay whichever results in the lower tax.

The current rules prevent one family member benefiting from the gross income based system and another obtaining the benefit of allowances (such as mortgage interest relief) under the allowance based system.

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Allowance based system

Under the allowance based system the individual will be taxed on their income less allowances (see below) at the applicable rates:

- The first £4,000 of taxable income - 17%
- The next £12,000 of taxable income - 30%
- The remainder of the taxable income - 40%

Personal relief is granted on submission of a claim to the tax office when applying for the tax code upon registration. The main allowances (which are reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment) for the tax year 2010/2011 are as follows:

Personal allowance	£2,812
Deduction for spouse	£2,632
Deduction for one parent family	£2,632
Deduction for children	£997
Deduction for children educated abroad	£1,105
Deduction for health insurance premiums	(i) £1,120
Life assurance premiums etc.	(ii) 100%
Mortgage interest	(iii) 100%
House purchase for own residential occupation	(iv) £15,500
Disabled individuals	£2,724
Nursery school allowance	£1,023
Dependent relative (resident)	£190
Dependent relative (non-resident)	£139
Daughter's services (not married)	£211
Blind allowance	£627
Apprentice allowance	£380
Age allowance (state pensionable age-married man)	£5,443
Age allowance (state pensionable age-single persons & married woman)	£8,075

- Maximum relief.
- Allowable premiums up to 1/7th of assessable income or 7% of capital sum assured. Relief is granted at the basic rate (currently 17%). Policies acquired prior to 3 June 2008 obtain relief at the tax payer's marginal rate provided there is no change in the value, term or premium.
- Interest payable on a loan to acquire a Gibraltar property to be used as a tax payer's principle residence is allowable on loans up to a value of £300,000. Loan arrangements entered into before 1 July 2008 will be eligible for relief on 100% of the loan as long as the loan continues to be secured on the current property and is in the name of the current borrower. The interest on these loans will be subject to "tapered grandfathering" whereby the relief on the amount of the loan in excess of £300,000 will be reduced by 1/10th per annum.
- One off allowance of £11,500 spread over a number of years and additional allowance of £4,000 restricted to a maximum of £1,000 per year.

Persons whose gross income does not exceed £8,000 per annum are exempt from tax.

For individuals whose gross income is between £8,000 and £19,500 per annum a low income earner's allowance is available.

There is also a tax credit of up to £4,000 available for individuals aged 60 and over who are not in receipt of pension or annuity income in excess of £2,000.

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Gross income based system

Under the gross income based system the individual will not receive any allowances and the applicable tax rates are as follows:

Persons whose gross income does not exceed £8,000 per annum are exempt from tax.

Persons with gross income between £8,000 and £16,000 per annum are taxed at 8% on the first £10,000 of taxable income with the remainder taxed at 20%.

Persons with gross income between £16,000 and £25,000 are taxed at the following rates, with the remainder at 20%:

- Income of £16,000 to £17,000, on the first £6,000 0%
- Income of £17,000 to £18,000, on the first £5,000 0%
- Income of £18,000 to £19,000, on the first £4,000 0%
- Income of £19,000 to £20,000, on the first £3,000 0%
- Income of £20,000 to £25,000, on the first £2,000 0%

Persons with gross income between £25,001 and £35,000 are taxed at the rate of 20%. A tapering relief of £2,000 is available between £25,001 and £26,000 reducing by £2 for every £1 increase in gross income.

Persons with gross income between £35,001 and £100,000 are taxed at 19.5% on the first £25,000 of taxable income with the remainder taxed at 28.5%. A tapering relief of £3,284 is available between £35,001 and £36,643 reducing by £2 for every £1 increase in gross income.

Persons with gross income between £100,001 and £353,000 are taxed at the rate of 20% on the first £25,000 with the balance taxed at 29%. A tapering relief of £1,772 is available between £100,001 and £100,862 reducing by £2 for every £1 increase in gross income.

Persons with gross income over £353,000 are taxed at the following rates:

- The first £25,000 of taxable income 20%
- The next £328,000 of taxable income 29%
- The next £351,800 of taxable income 20%
- The next £295,200 of taxable income 10%
- The remainder of taxable income 5%

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Tax incentives

Category	Requirements	Tax per annum
Category 2 (High Net Worth Individual)	Approved residential accommodation Non Gibraltar resident for the five years preceding the application Minimum of £2 million net assets	Minimum of £22,000 pa. Maximum of £29,880 pa.
High Executive Possessing Specialist Skills ("HEPSS")	Approved residential accommodation Non Gibraltar resident for three years preceding the application or taxpayer previously registered as Category 3 certificate holder. Minimum annual salary requirement of £120,000 Possess skills not available in Gibraltar which are necessary to promote and sustain economic activity of particular economic value to Gibraltar	£32,550 pa.

Standard rate of tax

The standard rate of tax for individuals is 30%

Benefits in kind

Benefits in kind are taxed as if they were gained on profit from employment although there is currently little direction on how they should be measured.

As from 1 January 2011, specific legislation is being introduced on how to tax benefits and the allowances available, particularly on the following:

- Expense payments;
- Vouchers and credit tokens;
- Living accommodation;
- Cars, vans and related expenditure;
- Loans to employees;
- Loans to directors, shadow directors or connected persons;
- Removal benefits and expenses.

The new Act also provides a mechanism for the Commissioner to tax benefits not specifically covered in legislation. The value of the benefit is the cost to the employer less any amount made good by the employee.

There is a non-taxable allowance in respect of benefits where the total annual value of the benefit is less than £250 in respect of any employee.

The employer may opt to pay the tax on the benefits on behalf of an employee. When the annual value of these benefits is between £250 and £15,000 tax shall be paid at the rate of 20%. When the annual value of the benefit is more than £15,000 tax shall be paid at the rate of 29%.

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Cross border workers

A cross border worker or “permitted individual” means an individual who is a non-resident individual and carries on, exercises or undertakes in Gibraltar any trade, business, profession, vocation or employment.

A permitted individual is entitled to the same relief as an ordinarily resident individual on their income from employment in Gibraltar for each month that they are employed in Gibraltar. They are not however entitled to obtain relief against any other income accrued in and derived from Gibraltar.

The permitted individual status will be abolished as from 1 January 2011.

Pension schemes

Overall employer and employee contributions are eligible for tax relief of up to 25% of earned income in respect of contributions made to approved occupational pension schemes (including contributions by proprietary directors and shareholders).

As from 1 July 2009 tax relief on contributions to retirement annuity contracts and approved personal pension schemes is limited to the lower of 20% of earned income or £35,000.

Employees can obtain tax relief on contributions to an approved scheme of up to 1/6th of their earned income. The 1/6th limit includes premiums payable on approved life insurance policies which are themselves subject to an earnings cap of 1/7th of earned income.

Pensions received from an approved occupational pension scheme by individuals aged 60 or over or who are compulsorily retired at age 55 under Section 8(2) of the Pensions Act (applicable to fire officers, police officers or prison officers) are not subject to tax in Gibraltar.

Social insurance contributions

Social insurance contributions are payable by every employee or self employed person in any week in which they work.

Employee contributions are 10% of gross earnings subject to a minimum of £5.00/£21.67 per week/month and a maximum of £25.16/£109.03 per week/month.

Employer contributions are 20% of gross earnings subject to a minimum of £15.00/£65.00 per week/month and a maximum of £32.97/£142.86 per week/month.

Self employed contributions are 20% of gross earnings subject to a minimum of £10.00/£43.33 per week/month and a maximum of £30.17/£130.73 per week/month.

Individuals aged 60 and over and those whose statutory occupational retirement age is earlier than the 60, as in the case of a fire officer or a police officer, and are in insurable employment shall be exempt from paying the employee's share of social insurance contributions. Employers will continue to be required to pay their share of the contribution.

There is also an exemption from the payment of employer and employee contributions in the case of:

- Absence from work due to illness (medical certificate required);
- Payments received whilst on maternity leave.

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Corporation tax

The standard rate of Gibraltar corporation tax is 22% but there is a small company rate of 20% which applies where the profits of an accounting period are less than £35,000 per annum and a marginal rate is charged on profits of between £35,000 and £43,333.

A 'small company' is one whose trading activity in any year has a minimum of 80% of total trading receipts derived from sources other than dividends, interest or discounts, rents, royalties, premiums and any other profits arising from property.

The Government have confirmed that a "low rate" of 10% will be effective from 1 January 2011.

Upon the introduction of the 10% rate, energy and utility providers will pay a 10% surcharge and will thus suffer an effective rate of 20%. This higher rate of tax of 20% will be levied on the following types of companies:

- Telecommunications companies;
- Petroleum companies;
- Electricity companies;
- Sewage companies;
- Companies which abuse a dominant position.

Withholding tax on interest payments

Currently, there is withholding tax on interest payments on Gibraltar situs loans (except to Gibraltar banks).

As from 1 January 2011, the taxation on interest will be abolished and accordingly there will be no duty to withhold tax.

Withholding tax on payments to subcontractors

Payments made to a subcontractor without a valid certificate are subject to 25% withholding tax on that portion of the payment which is not for materials used in construction.

As from 1 January 2011 wide ranging changes are expected in relation to payments to subcontractors which will entail the deduction at source of PAYE and social insurance contributions for payments made to contractors and subcontractors.

Thin capitalisation

As from 1 January 2011, interest paid on a loan to related parties (or loans where security is provided by related parties) where the ratio of the value of the loan capital to the equity of the company exceeds 5 to 1 will be considered as dividend payments and thus not a deductible expense for tax purposes. This provision is not applicable to Gibraltar banks and money lenders.

Transfer pricing

Where a non-resident individual transacts business with a resident individual and the transaction reduces the profits of the resident individual by more than the ordinary profits which might be expected to arise from that business, then in the case where the non-resident individual has a “close connection” and can exercise “substantial control” over the resident individual, the non-resident shall be assessable and chargeable to tax in the name of the resident individual as if such individual was an agent for the non-resident.

Also, by using the “anti-avoidance” provisions of Section 13 of the Income Tax Act the Commissioner is able to disregard a transaction if he is of the opinion that the transaction is either artificial or fictitious.

As from 1 January 2011 more stringent rules will come into effect. The amount of interest payments to connected persons which is in excess of that payable at “arms length” will be deemed to be a dividend. Where the amount charged for goods and services by the connected persons is not at “arms length” then the excess will be disallowed as a taxable expense. Any expenses allowed will be subject to the lesser of (i) the expense, (ii) 5 per cent of the gross turnover of the company and (iii) 75% of the pre-expense profit of the company.

Double taxation relief

When a Gibraltar resident is in receipt of income which is liable to tax in Gibraltar and this income is derived from and has already suffered tax at source, relief shall be allowed in respect of that income up to the lower of an amount equal to the tax already deducted or the Gibraltar tax.

Exempt company

These companies are not subject to tax in Gibraltar. In order to qualify for such status, the exempt company must demonstrate that it is not beneficially owned by Gibraltarians (or residents of Gibraltar with the exception of Category 2 individuals) and does not trade with such persons.

The legality of this status was challenged by the EU under the EU state aid rules in July 2001. In January 2005 the Government of Gibraltar reached an agreement with the EU Commission to permit existing tax-exempt companies to continue enjoying such status until 31 December 2010 provided that neither the beneficial ownership nor the activities of the company change. No new exempt companies have been established since 30 June 2006.

The Companies (Taxation and Concessions) Act will be repealed on 31 December 2010.

Those companies that are presently tax exempt will pay tax at the effective rate of corporate tax as from 1 January 2011 assessed on an actual basis.

Value added tax

There is no VAT in Gibraltar.

Customs and excise duties

Goods imported into Gibraltar from outside are, with some exceptions, generally subject to import duty at the applicable rate which is usually 12%.

Tax Facts 2010/2011

Savings Directive

Where a paying agent in Gibraltar makes an interest payment to a beneficial owner, that is a natural person and not a corporate entity, resident in another EU member state (or a country with a bilateral agreement with the EU), the minimum amount of information to be reported to the competent authority shall consist of:

- The identity and residence of the beneficial owner;
- The name and address of the paying agent;
- The account number of the beneficial owner;
- Information concerning the interest payment.

The competent authority shall transmit the information to the competent authority of the member state of residence of the beneficial owner within six months following the end of the tax year in which the payment was made.

For residents of the United Kingdom there is an obligation on the paying agent to withhold tax from the amount of the interest payment at the following rates:

- 20% up to 30 June 2011; and
- 35% thereafter.

A beneficial owner resident in the United Kingdom may request that no tax be withheld where:

- He authorises the paying agent to report all interest payments made to the competent authority; and
- He presents to his paying agent a certificate drawn in his name by the competent authority of the United Kingdom.

Capital gains tax

There is no capital gains tax in Gibraltar.

In deciding whether an activity is a trade or a capital gain the Commissioner will refer to case law, which in summary states that:

- The frequency of trades undertaken is not relevant to the issue of whether or not the activities amount to a trade;
- Where professional organisation is applied to an activity it can amount to a trade; and
- With respect to the buying and selling of stocks and shares, such activities will only amount to a trade if there is a strong element of professional organisation.

Tax Facts 2010/2011

Wealth tax

There is no wealth tax in Gibraltar.

Estate duty

There is no estate duty in Gibraltar.

Rates

General rates are levied on all properties in Gibraltar.

Stamp duty

Stamp duty is payable on the transfer or sale of any Gibraltar real estate or shares in a company owning Gibraltar real estate (on an amount based on the market value of the said real estate) at the following rates:

Consideration	% of value of consideration
Less than £200,000	0%
£200,000 to £350,000	2% on first £250,000, 5.5% on balance
Over £350,000	3% on first £350,000, 3.5% on balance

Capital Duty

Capital duty of £10 is payable on the initial authorisation of capital or any subsequent increase thereto.

Gaming tax

Gaming tax is levied at 1% of the gaming income. The tax paid is subject to a minimum of £85,000 and maximum of £425,000.

Tax returns

Tax returns are due by 30 September following the year in which the income is assessed.

As from 1 January 2011, both individuals and companies will be required to file returns and calculate their tax liability for the year. The return together with the estimated liability needs to be accompanied by payment of the tax due. For individuals, partnerships and sole traders the due date for filing is 30 November. For companies the due date is six months after the date of the company's financial year end.

Companies with turnover of £500,000 or more are also obliged to file audited accounts within nine months of the companies financial year end.

Companies with turnover of less than £500,000 will be obliged to file accounts accompanied by an Independent Accountant's Report within nine months of the company's financial year end.

Tax Facts 2010/2011

Payment of tax

For employees, collection of tax is initially through a Pay As You Earn (“PAYE”) system. Every employer paying emoluments to an employee is required to deduct from the amount of emoluments a specified amount of tax. Payment is due by the 15th day of the following month. At the end of the year of assessment the employer is obliged to make a return of the employee’s emoluments and tax deducted together with the payment of any outstanding tax. Returns are due by 31 July following the year of assessment. Late filing of a return will incur a penalty of £10 per employee per day.

Tax for any year of assessment is due on the later of 28 February in the year of assessment or 60 days after the issue of the assessment. Tax paid after the due date incurs a penalty (see below).

If the Commissioner has reason to believe that a person, who has been assessed for tax, might leave Gibraltar before the tax is due and payable he may, by notice in writing, demand payment of the tax on the date specified on the notice.

As from 1 January 2011 new payment deadlines will be introduced.

Individuals (other than employees) will be required to make two payments on account on 31 December and 30 June in each year of assessment. Each payment should be equal to 50% of the tax based on the previous year’s assessable income.

Companies will be required to make payments on account of future liabilities on 28 February and 31 August in each calendar year. Each payment should be equal to 50% of the tax based on the previous year’s assessable income.

The balance of tax due i.e. the actual liability less payments on account is due on the date of filing of the return.

Examples of transitional provisions have been published.

Appeals

If a tax payer disputes an assessment, he may appeal against that assessment by notice in writing addressed to the Commissioner within 21 days of the date of service of the notice of the assessment. As from 1 January 2011 the appeal notice period is extended to 28 days.

Fines and penalties

Penalties are imposed if tax is not paid by the due date. The amount of the penalty is equal to 10% of the tax due. If tax remains unpaid for five months after the due date, the Commissioner at his discretion may levy additional penalties of 10% of the tax due for each of the additional five months that pass until the tax is repaid.

If a person makes an incorrect return by omitting or understating any income without a reasonable excuse they are liable on conviction to a fine and double the amount of tax which has been undercharged as a consequence of the incorrect return. Default of payment can result in imprisonment.

A person who wilfully and with intent to evade or to assist any other person to evade tax by purposely omitting income from a return, maintains false accounts or provides a false answer or statement is, if convicted, liable to a fine being treble the amount of tax not paid as a result of the offence and imprisonment.

Tax Facts 2010/2011

As from 1 January 2011, the following penalties and fines are applicable:

For the late payment of tax, there is a penalty of 10% of the amount of tax due on the day immediately after such payment was due. If unpaid for 90 days a further amount of 20% of the tax due is charged and if still unpaid after this period then a 10% per annum surcharge will be added which is compounded on a daily basis until the amount of the tax and penalties are fully paid.

Failure to file a return by the due date which for individuals is 30 November and companies six months immediately following the year of assessment will result in a penalty of £50 with a further penalty of £300 if the return is not submitted within three months after the due date.

Failure to respond to a notice or request to submit information or documentation will result in a fine of £200 on the day the failure occurs and a penalty of up to £500 per day thereafter. Failure to comply beyond a three month period, if convicted, can result in imprisonment.

For fraudulently, recklessly or negligently delivering to the Commissioner an incorrect return, accounts or information there is a fine of up to 150% of the difference between the actual tax due and the tax due as per the original declaration. The amount of the penalty will depend on:

- (i) The amount of the tax lost and/or delayed;
- (ii) The gravity of the offence i.e. if deliberate or an honest mistake;
- (iii) The level of cooperation in the investigation.

Failure to pay to the Commissioner PAYE or social insurance which has been withheld/should have been withheld will become a criminal offence leading to imprisonment and/or a fine.

If an amount of PAYE and/or social insurance exceeding £5,000 is outstanding for over three months the Commissioner will, after giving 14 days notice, publish in the Gibraltar Gazette the name of the person whom he has reason to believe has failed to comply with the PAYE Regulations.

Failure to notify the Commissioner of an arrangement the main benefit of which is to avoid the payment of tax will result in a fine of £100 on the day the failure occurs and a penalty of £200 per day thereafter.

Fines and penalties introduced under the new Act will not apply until after 30 June 2012, however interest on unpaid tax will apply as from the introduction of the Act.

Tax Facts 2010/2011

Deduction of approved expenditure on premises

For tax payers with an interest in a building situated in Gibraltar an allowance is available for approved expenditure on the painting, decorating, repair or enhancement of the frontage of that building.

The approved amount will be available as a deduction against the taxpayer's income. This deduction is in addition to any deduction, relief or allowance given in accordance with any other provision of the Income Tax Act in respect of the same expenditure.

Notice of proposed works and expenditure needs to be provided to the Town Planner within 28 days from commencement of work.

The claim for the deduction of approved expenditure must be made within two years after the end of the year of assessment in respect of which the deduction is claimed.

Development aid

In order to encourage private development in Gibraltar, promoters and developers of approved projects are offered certain incentives such as tax relief, import duty relief and rates relief.

In order to qualify for the above reliefs the project needs to be a new project the aim of which is:

- To create a tangible immovable asset in Gibraltar that will remain in existence after the applicant has ceased to derive the benefits under the licence; and
- To provide more than two additional units of housing accommodation in Gibraltar; or
- To contribute materially to the development of the tourist industry in Gibraltar; or
- To afford any new employment opportunities or career prospects in Gibraltar; or
- Otherwise to improve materially the economic or financial infrastructure of Gibraltar; and
- The project shall be one which is for the economic benefit of Gibraltar.

The project needs to be completed within a specified time (dependant on the type of project) following the issue of the licence and the applicant must not expend less than the prescribed amount for the project.

Application for development aid must be made to the Minister for Trade.

Historical Tax Rates

Corporate

	2010/11	2009/10	2008/09	2007/08	2006/07
Corporate tax rate (%)	22	22	27	33	35
Lower band (£)	35,000	35,000	35,000	35,000	35,000
Upper band (£)	43,333	43,333	67,667	95,665	105,000
Small company rate (%)	20	20	20	20	20

As from 1 January 2011 the new “low rate” of 10% will apply, with energy and utility providers, and companies which abuse a dominant position, paying an additional 10% surcharge.

Personal

Allowance based system - rates

%	2010/11	2009/10	2008/09	2007/08	2006/07
17	4,000	4,000	4,000	4,000	4,000
30	12,000	12,000	12,000	12,000	9,000
40	Balance	Balance	Balance	Balance	-
42	-	-	-	-	Balance

Allowance based system - allowances

	2010/11	2009/10	2008/09	2007/08	2006/07
Personal allowance	2,812	2,735	2,660	2,660	2,660
Deduction for spouse	2,632	2,560	2,490	2,490	2,490
Deduction for one parent family	2,632	2,560	2,490	2,490	2,490
Deduction for children	997	970	940	940	940
Deduction for children educated abroad	1,105	1,075	1,045	1,045	1,045
Disabled individuals	2,724	2,650	2,575	2,575	2,575
Nursery school allowance	1,023	995	965	965	965
Dependent relative (resident)	190	185	180	180	180
Dependent relative (non-resident)	139	135	130	130	130
Daughters services (not married)	211	205	205	205	205
House purchase allowance	11,500	11,500	11,500	11,500	11,500
Additional house purchase allowance	4,000	4,000	4,000	4,000	4,000
Blind allowance	627	610	590	590	590
Apprentice allowance	380	370	360	360	360
Deduction for health insurance premiums	1,120	1,090	1,030	1,030	1,030
Age allowance (married man)	5,443	5,295	5,150	5,150	5,150
Age allowance (single person & married woman)	8,075	7,855	7,640	7,640	7,640

The low income earners allowances and tax credit for individuals aged 60 years and over are not shown above.

Gross income based system

%	2010/11	2009/10	2008/09	2007/08	2006/07
20	25,000	25,000	25,000	25,000	-
29	328,000	75,000	-	-	This system was introduced on 1 July 2007
30	-	-	75,000	75,000	-
35	-	Balance	-	-	-
38	-	-	Balance	-	-
40	-	-	-	Balance	-
20	351,800	-	-	-	-
10	295,200	-	-	-	-
5	Balance	-	-	-	-

Tapering relief between tax bands is not shown in the above table.

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