



Thinking Beyond Borders: Management of Extended Business Travelers - Gibraltar



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Key message

1 Key message

An individual's liability to income tax in Gibraltar is determined by residency for tax purposes and the source of the individual's income.

Income tax is levied at progressive rates on the individual's taxable income for each year of assessment.

Business travelers could be liable to tax on income relating to their Gibraltar workdays and duties unless an exemption applies e.g. income from occasional presence in Gibraltar.

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Income tax

2 Income Tax

2.1 Liability for income tax

Individuals are taxed in accordance with the Income Tax Act 2010 (“ITA”). Under the ITA, an individual’s liability to Gibraltar income tax is determined by their residence status. An individual can be ordinarily resident or non-ordinarily resident for Gibraltar tax purposes.

An individual is ordinarily resident in Gibraltar if they are present in Gibraltar in any year of assessment for a period of, or periods together amounting to, at least 183 days; or present in Gibraltar in any year of assessment which is one of 3 consecutive years in which the total of the days for which the individual has been present in Gibraltar exceeds 300.

For the purposes of the above, presence in Gibraltar for any part of a 24-hour period commencing at midnight shall be counted as a day of presence whether or not any accommodation is used in Gibraltar.

An ordinarily resident individual is taxed on specified income, including employment income, that is “accruing in or derived from” Gibraltar and also certain types of income that are accruing in, derived from or received in any place other than Gibraltar, including employment income

An individual who is not ordinarily resident in Gibraltar is only taxable on specified income that is accruing in or derived from Gibraltar, including employment income

Extended business travelers are likely to be considered non-ordinarily resident in Gibraltar unless they meet the above residency criteria but income, wherever received, from any employment exercised in Gibraltar, is treated as having been accrued in and derived from Gibraltar.

2.2 Tax trigger points for employment income

Generally, there is no threshold or minimum number of days that exempts an employee from the requirement to pay tax in Gibraltar in relation to an employment exercised in Gibraltar. However, a non-ordinarily resident individual who is present in Gibraltar on less than 30 days in aggregate in any year of assessment will not be subject to tax on:

- emoluments from any office or employment where the duties of an office or employment other than duties ancillary to the office or employment are performed exclusively outside of Gibraltar, except in relation to dual contracts; or
- fees in respect of the office of director of a company.

2.3 Types of taxable income

For extended business travelers, the types of income that are generally taxable are employment income, benefits-in-kind paid to or on behalf of the individual, whether by the employer or a third party, and other Gibraltar source income, e.g., self-employment income, rental income from Gibraltar real property, etc. In some cases, the cost of relocation and travel to, as well as accommodation in Gibraltar, can be exempt from tax. Each case needs to be considered separately based on the facts and circumstances.

Most passive investment income, e.g., bank interest, dividends from companies listed on a recognised stock exchange, dividends paid to non-residents, is not taxable in Gibraltar. There is no tax in Gibraltar on capital gains arising to an individual.

2.4 Tax rates

Ordinarily resident individuals may choose between two tax systems, the Gross Income Based System (GIBS) and the Allowance Based System (ABS) and are generally taxable by reference to whichever results in the lower tax liability. The tax rates vary under each system and are progressive. The tax bands shall be reduced by one-twelfth for each calendar month in the year of assessment during which that individual does not carry on, exercise or undertake any trade, business, profession, vocation or employment in Gibraltar.

Under the ABS reliefs are available depending upon an individual's personal circumstances (such as marital status, number of dependents, childcare costs, etc.). There are also limited deductions available under the GIBS e.g. for mortgage interest, pension contributions, first time home purchase and medical insurance contributions.

Please note that the allowances are generally reduced by the number of months an individual is not resident in Gibraltar.

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Social Security

3 Social Security

3.1 Liability for social security

Employees, including non-ordinarily resident individuals, performing work in Gibraltar are required to make social security contributions, unless they are exempt due to their age.

For UK nationals, an exemption from the Gibraltar social security scheme may also be obtained, if the employee/assignee can satisfy the Gibraltar Tax Authorities that they are paying contributions into the UK. For EU nationals this was also an option, but this is no longer available following the UK (including Gibraltar) leaving the EU.

If no exemption is available, then an extended business traveler and their employer could be subject to Gibraltar social security.

Employers are liable to pay 19 percent of the employee's gross earnings (subject to a minimum of GBP28.50 per week and a maximum of GBP50.50 per week).

Employees are required to pay 10 percent of their gross earnings (subject to a minimum of GBP12.50 per week and a maximum of GBP36.70 per week).

From 1 July 2023, employers will be liable to pay 18 percent of the employee's gross earnings (subject to a minimum of GBP29.00 per week and a maximum of GBP51.00 per week) and employees will be required to pay 10 percent of their gross earnings (subject to a minimum of GBP13.00 per week and a maximum of GBP37.00 per week).

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Compliance obligations

4 Compliance obligations

4.1 Employees' tax compliance obligations

The Gibraltar year of assessment is from 1 July to 30 June and both ordinarily resident and non- ordinarily resident individuals with assessable income or income liable to tax must submit tax returns by 30 November following the end of each year of assessment.

Where the Commissioner of Income Tax is satisfied that given the circumstances of an individual and the fact that tax due on any income accrued and derived outside Gibraltar will be reduced to nil through the granting of unilateral relief, he may agree that there is no requirement for the individual to make a return of that income. Given the position explained in Section 2, this is likely to be relevant for an ordinarily resident individual.

When leaving Gibraltar permanently or indefinitely, a claim for a final assessment needs to be completed and submitted to the Income Tax Office together with Part 1 of the P7A (Details of employee leaving work) from the last employer of the individual leaving Gibraltar.

. A form (income from occasional presences declaration) needs to be submitted to the Income Tax Office stating that the conditions are met for each relevant year of assessment

4.2 Employers reporting and withholding requirements

Employers are required to withhold income tax and social security from an individual's income earned while performing work in Gibraltar and pay this over to the Gibraltar Income Tax Office by the 15th day of every month.

At the end of each year of assessment, the employer must make a return for each employee and in aggregate for all employees, specifying the emoluments paid, benefits provided, and the amount of income tax/social security deducted.

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Immigration

5 Immigration

5.1 Work permit/visa requirements

At the moment, EEA/British nationals may enter and remain in Gibraltar and do not require a work permit but will need to obtain a permit of residence and Civilian Registration Card

On 31 December 2020, the UK (including Gibraltar) left the European Union and negotiations about the future relationship with the European Union are still undergoing and will be dependent on whether a Treaty between the UK and the European Union in relation to Gibraltar is concluded.

Other nationals may require both a visa and/or work permit before entering Gibraltar.

5.2 Non-deductible costs for extended business travelers

These could include pension contributions by an employer to a pension scheme which has not been approved by the Commissioner of Income Tax.

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Other issues

6 Other issues

6.1 Double taxation treaties

A Double Taxation Agreement with the UK is in force.

There is also an International Agreement on taxation between the UK and Spain regarding Gibraltar that is now in force, which covers the tax residency of individuals when considered both Spanish and Gibraltar tax resident under domestic legislation and exchange of information between the tax authorities

In certain circumstances and subject to conditions, relief may be available for income tax paid in another country, territory or jurisdiction. This does not apply to tax paid or payable under the ITA by any person on income accruing in or derived from Gibraltar to which this relief would otherwise apply only by virtue of the fact that the country in which he is resident for tax purposes charges that income to tax on the basis of his residence in that country.

6.2 Permanent establishment implications

It is likely that there will be tax implications in Gibraltar for an overseas company as a result of an extended business traveler working in Gibraltar, but this would depend on the facts and circumstances.

6.3 Indirect taxes

There is no VAT in Gibraltar but there is Stamp Duty on Gibraltar real property and import duties.

6.4 Transfer Pricing

Gibraltar has introduced the transactions with “connected” persons provisions contained within the ITA. A transfer pricing implication could arise to the extent that an employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction. The implications of this would be dependent on the nature and complexity of the services performed.

6.5 Local data privacy requirements

Gibraltar has data privacy laws, including GDPR.

6.6 Exchange control

The official currency of Gibraltar is Sterling and there are no exchange controls.

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Footnotes

[1] INTERNATIONAL TAX AGREEMENT (UNITED KINGDOM) NOTICE 2020.

[2] International Agreement on Taxation and the protection of financial interests between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland regarding Gibraltar

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