



## Income Tax Office

HM Government of Gibraltar

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 (the “International Agreement”)

30 March 2021

Following the approval of the International Agreement by the Gibraltar Parliament, HM Government of Gibraltar has published the necessary regulations for this to enter into force.

The purpose of this circular is to provide due notification of the requirements and obligations imposed under the International Agreement.

Pursuant to Article 2(2)(d), the Gibraltar Income Tax Office is required to provide the designated Spanish tax authorities with information in relation to the persons charged with effective management and the legal beneficial owners of any Gibraltar-based legal person, entity or other legal structure or arrangement that is within scope of either of the following residency rules included in Article 2(2)(a) of the International Agreement. The rules are:

- Article 2(2)(a)(iii)

The majority of the natural persons in charge of effective management are tax resident in Spain; or

- Article 2(2)(a)(iv)

The majority of the interests in the capital or equity, voting or profit-sharing rights are under the direct or indirect control of either natural persons who are tax residents in Spain or legal persons, entities and other legal structures or arrangements linked to tax residents in Spain.

The purpose of sharing this information is to establish the nexus to residency only in Gibraltar for tax purposes.

In order to shield business from these rules, the International Agreement contains a safeguard which allows such legal persons, entities and other legal structures or arrangements to retain their residency only in Gibraltar, provided that they can

demonstrate sufficient physical presence and business and economic operations in and from Gibraltar.

These tests are measured on a collective basis and therefore the safeguard is available provided that all 5 key conditions are satisfied. These conditions must be proved as at 31 December 2018.

The 5 key conditions are as follows:

- (i) has a fixed place of business through which the business is wholly or partly carried on in Gibraltar with an adequate number of employees, with the necessary qualifications and an adequate amount of operating expenditure with regards the core income generating activities;
- (ii) is effectively subject to and pays Corporation Tax in Gibraltar on its profits at the prevailing rate in accordance with Gibraltarian tax legislation (presently 10% or 20%);
- (iii) has for the period between the date of its incorporation and the 31 December 2018, operated in or from Gibraltar and has done so without interruption or a change in its trade since 1st January 2011;
- (iv) has more than 75% of its income in respect of the financial year immediately preceding the 31 December 2018, accruing in and deriving from sources in Gibraltar in accordance with Gibraltarian tax legislation as may be amended from time to time; and
- (v) has less than the following incomes in respect of the financial year immediately preceding the 31 December 2018 from sources in Spain in accordance with Article 13 of the codifying legislation of the Non-resident Income Tax Act of the Spanish tax legislation as may be amended from time to time:
  - A. 5% for a legal person, entity and other legal structure or arrangement whose annual turnover exceeds 6 million euros;
  - B. 10% for a legal person, entity and other legal structure or arrangement whose annual turnover exceeds 3 million euros but does not exceed 6 million euros;
  - C. 15% for a legal person, entity and other legal structure or arrangement whose annual turnover does not exceed 3 million euros;

When considering annual turnover in paragraph (2)(b)(v), turnover shall be taken to include that of the legal person, entity, other legal structure, or arrangement, together with the turnover of any related party incorporated in Gibraltar, where related party is defined in accordance with International Accounting Standard (IAS) 24 on Related Party Disclosures;

Only legal persons, entities and other legal structures incorporated before 16 November 2018 and who trigger the residency rules under Article 2(2)(a) (iii) or (iv) are eligible to apply for this safeguard.

HM Government of Gibraltar has therefore made available a form allowing you to submit the necessary evidence in support of your claim that all 5 key conditions are satisfied as at 31 December 2018.

Completed forms should be filed with the Income Tax Office by 30 April 2021 and can be uploaded directly using our secure facility, which will be made available as from 6 April 2021.

Both the form and upload gateway are available at the following landing page: [Income Tax eGov services](#).

Specific FAQs that should assist you with any queries you may have in completing this form have been made available and these are directly accessible through the form.

This submission is not mandatory and you should complete it if you believe you may be exposed to taxation in Spain as a direct result of the International Agreement and pursuant to the rules contained in Article 2(2)(a)(iii) or (iv). However, failure to provide the information may result in these rules being applied and tax being imposed in Spain.

The Income Tax Office in Gibraltar may query your submission but ultimately it is your responsibility to ensure that no false statements or declarations are made.

HM Government of Gibraltar will accept no liability arising from taxation in Spain as a result of an incorrect or fraudulent declaration being made.

Please email our team with any queries on [taxtreaty.queries@gibraltar.gov.gi](mailto:taxtreaty.queries@gibraltar.gov.gi).

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