

Jurisdiction's name: Gibraltar

Information on Residency for tax purposes

Section I – Criteria for Individuals to be considered a tax resident

Please list the domestic legal provisions that determine whether an Individual is to be considered a tax resident of that jurisdiction. Such legal provisions may be articles of the relevant tax code (with hyperlinks to the provisions themselves, where possible), as well as any further regulations specifying the residency criteria (if available, with hyperlinks).

This section should ideally also provide further guidance for Individuals to determine whether they are a resident for tax purposes in the jurisdiction, presented either in narrative form or by means of hyperlinks to the relevant sections of the government or tax authority website or publications.

Gibraltar's response:

Tax residency of an individual is determined by reference to the definition of “ordinarily resident” contained in section 74 of the Income Tax Act 2010:

“ordinarily resident” when applied to an individual means an individual who irrespective of whether such individual is domiciled in Gibraltar or otherwise who in any year of assessment –
(a) is present in Gibraltar for a period of, or periods together amounting to, at least 183 days; or
(b) is present in Gibraltar in any year of assessment which is one of three consecutive years in which the total of the days on which the individual is present in Gibraltar exceeds 300, and for the purposes of this definition 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...”

<http://www.gibraltarlaws.gov.gi/articles/2010-21o.pdf>

Section II – Criteria for Entities to be considered a tax resident

Please list the domestic legal provisions that determine whether an Entity is to be considered a tax resident of that jurisdiction. Such legal provisions may be articles of the relevant tax code, as well as any further regulations specifying the residency criteria. Ideally, also a list of domestic Entity types that are in principle considered tax residents of the jurisdiction should be included (if available, with hyperlinks).

This section should ideally also provide further guidance for the different types of Entities to determine whether they are a resident for tax purposes in the jurisdiction. It can be presented either in narrative form or by means of hyperlinks to the relevant sections of the government or tax authority website or publications.

Gibraltar's response:

Tax residency in respect of an entity is determined by reference to the definition of “ordinarily resident” set out in section 74 of the Income Tax Act 2010:

“ordinarily resident” means when applied to any company:

(a) a company whose management and control is in Gibraltar; or (b) a company the management and control of which is exercised outside Gibraltar by persons who are ordinarily resident in Gibraltar for the purposes of this Act...

<http://www.gibraltarlaws.gov.gi/articles/2010-21o.pdf>

Section III – Entity types that are as a rule not considered tax residents

This item should ideally provide a list of entity types that are considered fiscally transparent by the jurisdiction or are considered to have no tax residence by the jurisdiction based on other criteria, including a particular legal status or tax regime (such as trusts, foundations, partnerships, investment funds etc.), but are considered to have a nexus with the jurisdiction, in particular due to the fact that the entity was incorporated or is organised under the laws of the jurisdiction or has its place of effective management within the jurisdiction. Jurisdictions may wish to complement this section with further guidance on their domestic rules on the topic, either in narrative form or by inserting relevant hyperlinks.

Gibraltar’s response:

Partnerships and limited partnerships are considered fiscally-transparent entities and are taxed as prescribed by the provisions of section 18 of the Income Tax Act 2010:

“Partnerships.

18. Where a trade, business or profession is carried on by two or more persons jointly

(a) the profits or gains of any person from the partnership for any period shall be deemed to be the share to which the person was entitled during that period in the profits or gains of the partnership, such profits or gains being ascertained in accordance with the provisions of this Act; and

(b) the assessable profits or gains of any person from the partnership shall be computed in accordance with the provisions of sections 15 and 16 by treating the person’s share of the divisible profits or gains of the partnership as though it were profits or gains of a trade, business or profession.”

<http://www.gibraltarlaws.gov.gi/articles/2010-21o.pdf>

Section IV – Contact point for further information

Please provide the contact details of the competent service within their tax authority, which can be contacted in case of further questions on tax residency.

Commissioner of Income Tax, Ministry of Finance, HM Government of Gibraltar, St Jago's Stone Block, 331 Main Street, Gibraltar GX11 1AA; incometax@gibraltar.gov.gi; tel: +350 200 75260

(EU Member States can furthermore refer to the Taxes in Europe Data Base maintained by the European Union, which contains a wide range of information on all taxes in the EU Member States, including on tax residency.)