

Gibraltar

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Questionnaire for National Reporters

Private Client and Immigration Working Session

**Movement of High Net Worth Individuals
Localisation et Délocalisation des Clients Privés Fortunés**

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Background

As certain governments around the world struggle with fiscal deficits, their attention has turned to international tax evasion (illegal) and the perceived shortcomings of the international tax system from the point of view of tax avoidance (legal). In other regions we have seen unsettled economies combined with civil unrest. Families are seeking safer, more stable jurisdictions not just for themselves but for future generations as they look for long term security and are increasingly looking overseas for a solution.

How do our immigration, legal and tax systems cope with the realities and complexities of 21st century aging family life and the demand for economic security/stability? What are the particular challenges for practitioners in assisting these families? How does increasing governmental exchange of information and compliance requirements affect strategies for investment, tax planning and personal security. How does the global citizen manage a world of overlapping, often conflicting regulation?

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1. PRELIMINARY MATTERS

We would ask that you return completed the Questionnaire and your answers to the case studies below by **Friday, 28 February 2014** (earlier if possible please).

Prior to dealing with the legal problems thrown up by the case studies, could you please deal with the following questions with reference, where relevant, to any recent case law or general practice. If you need to clarify the answer to a question,

please do so. If a question is not an issue in your country, please provide an explanation as to why it is not.

If you are a delegate responding as part of the Immigration Commission, please respond **only** to sections 1.1 and 2.1.

1.1 **Immigration and Nationality [for Immigration Commission only]**

1.1.1 Briefly outline any immigration, residency or citizenship programmes your jurisdiction has to attract high net-worth individuals (HNWIs).

Category 2 and High Executive Possessing Specialist Skills (HEPPS) status both have liability to tax 'capped' at a certain amount.

A Category 2 Individual will have their Gibraltar tax capped to the maximum calculated on the first £80,000 of assessable income, with a minimum tax payable per annum of £22,000 and a maximum of £29,800.

An individual in respect of whom a HEPSS certificate has been issued shall be charged to tax limited to the first £120,000 of his assessable income for the year of assessment under the Gross Income Based system.

1.1.2 Are there any proposed changes to the programmes outlined in 1.1.1?
No

1.1.3 Is there a dichotomy between your Government's wish to attract HNWIs as against public perception of immigration?

No

1.2 **Cross-border succession**

1.2.1 Is testamentary freedom a right recognised by national law or public policy?

(A) Yes

1.2.2 Can those entitled to the reserved portion (heirship entitlement), during the life of the donor, waive their rights to a reserved share?

(A) Yes (B) No (C) Not relevant to your country

If so, please briefly set out the options.

The beneficiary should be able to however, in most cases the beneficiary would be unaware of their entitlement to the reserved portion until the donor has passed away.

1.2.3 Can an individual resident in your country elect the law applicable to his/her succession? If relevant/applicable, please consider your answer in the context of Brussels IV (Regulation (EU) 650/2012) and/or the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons.

(B) No

If yes, is this election limited to the law of the deceased's:

(A) Nationality (B) Habitual Residence (C) Other

1.3 Personal taxation and compliance

1.3.1 Please provide a brief summary on the current rules as to liability to tax (e.g. residence, nationality, domicile (if applicable)).

Time spent in country will deem you tax resident.

1.3.2 Have there been any changes introduced in the last 24 months to the definition of who is a "taxpayer" e.g. "resident", "habitually resident" or "domiciled" in your country?

(A) Yes (B) No- last amendment was 1.1.2011 when the new Income Tax Act 2010 was introduced.

If yes, please briefly summarise the changes.

1.3.3 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for residents?

(A) No, but in 2010 new Income Tax Act greater penalties were introduced.

Introduction of self-assessment with penalties for missed deadlines

Increased investigative powers with penalties for no replies or for incomplete/ inaccurate replies.

If yes, please briefly set out the key provisions.

1.3.4 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for non-residents with assets located in your country?

(A) Yes (B) No, covered by Income Tax Act 2010.

If yes, please briefly set out the key provisions.

1.3.5 Has your country undertaken (or proposed the introduction of) any legislative steps in the last 24 months to promote transparency in tax reporting obligations and to combat international tax evasion in the context of private wealth?

(A) Yes (B) Information exchange tax treaties with other countries

If yes, please briefly set out the key measures.

1.3.6 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for holding structures with assets or “beneficiaries” located in your country?

(A) Yes (B) No, covered by Income Tax Act 2010.

If yes, please briefly set out the key measures.

1.4 **Mental capacity of adults**

1.4.1 What system is in place in your country to deal with an individual who has lost capacity?

A Power of Attorney. Unfortunately, in Gibraltar we do not have the UK concept of an Enduring Power of Attorney or a Living Will.

1.4.2 Does your country provide for Powers of Representation/Lasting Powers of Attorney/Mandats de protection future in relation to an incapacitated adult’s personal welfare and/or property and affairs? No

(A) Personal welfare only (B) Property and affairs only (C) Both personal welfare and property and affairs

1.4.3 Will your country recognise and enforce a form of Power of Representation or Attorney intended to have effect after the onset of mental incapacity valid in the state in which it is prepared? Are there proposals for legislative change in the field of mental capacity?

A Court in Gibraltar should do, but as per 1.4.1.

(A) Yes (B) No Not aware of any proposals – could do with some though!

If yes, what are the proposals?

1.4.4 Is your country a party to the Hague Convention XXXV for the International Protection of Adults of 13 January 2000?

(A) Yes (B) No

1.4.5 Is your country a party to the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol 2006?

(A) Yes (B) Not that I know of.

QUESTIONS FOR CASE STUDIES

2. CASE STUDY A: ROBERTA AND PAUL

Roberta and Paul married in the Netherlands in 2008. Roberta is Brazilian and Paul is Dutch. Roberta, an IT specialist, was offered a job with Pear Inc in Silicon Valley and she and Paul moved to California (USA) in 2011. The family grows with twin boys and life is good.

Roberta's mother, Gloria, who is in her 70s, wants to live with Roberta (her only child) and Paul so that she can spend more time with her grandchildren. Interested in moving to your country, Roberta and Paul come to see you for advice.

2.1 Immigration law [for Immigration Commission only]

2.1.1 Roberta and Paul are exceptionally wealthy. What immigration categories (e.g. investor type programmes) might apply to HNWI's such as Roberta and Paul to:

- (a) move firstly to the US (please omit this if you do not advise on US immigration law); N/A
- (b) and then secondly to your country? Cat 2 or HEPPS. EU nationals such as Paul would also be able to opt for ordinary residency.

If your advice would change if Paul was not a Dutch national, please explain. Cat 2 & HEPPS are available to non EU Nationals

2.1.2 What immigration options does Gloria have to move to your country on a long term basis? Would need a VISA first.

2.1.3 What, if any, are the residency requirements for a long term move to your country for Roberta, Paul and Gloria?

Ordinary residency requirements for the application would be:

Application for Civil Registration Card duly signed;

Photocopy of the applicant's passport;

A copy of the Agreement relating to the purchase/rental of property;

Proof of employment letter and pay slips showing monthly salary and payments to tax and social insurance or proof of self-sufficiency and bank accounts and private health insurance;

Marriage Certificate if married;

Birth certificates for the children- must be in English;

Two passport photographs; and

Application fee.

NB. Specialist tax statuses require different documents to be shown and minimum level of wealth to be evidenced.

2.1.4 Are there are any long term requirements that the family should be aware of in order to maintain their immigration status in your country?
No, but need to meet the above every year

2.1.5 Will any of the members of the family be able to acquire citizenship of your country? Need to be resident for several years first

Now settled into the hustle and bustle of life in your capital city, Roberta and Paul (who are very happy together and, incidentally, exceptionally wealthy), having purchased rental properties in Brazil and invested wisely in stocks and bonds, they are looking to buy a US\$ 20 million Penthouse Duplex in the hipster district of your capital city. They believe it is time to consider tax and estate planning opportunities and come to see you.

During the meeting you are also told that:

- Roberta is likely to inherit family assets - principally artwork - from Gloria. The family want to ensure that upon Gloria's death, the family assets will not be considered a "matrimonial asset" and that the assets, to the extent possible, can pass to the grandchildren (**the Inheritance**).
- Paul's father has been diagnosed with a degenerative medical condition, which may lead to a loss of mental capacity. Paul has been told that the condition is likely to be hereditary.

2.2 Real estate planning

What structuring and/or tax planning opportunities should Paul and Roberta consider with respect to the purchase of the Penthouse Duplex (i.e. to mitigate taxation in your country)? No IHT or CGT in Gibraltar

2.3 Succession law and mental capacity

2.3.1 What would you advise with respect to the Inheritance? As above

2.3.2 What steps can Paul take to ensure that Roberta has full authority to take decisions on his behalf and deal with their assets in the event that Paul loses his mental capacity? POA

2.3.3 More generally, with a shared wish to keep matters "simple", what estate and succession planning opportunities should Roberta and Paul consider? A Will

3. QUESTIONS FOR CASE STUDY B

3.1 Case Study B: Bruce and Megan

Bruce, who has been given your contact details from an AIJA member, comes to see you for advice. Bruce gives you his background:

- 30 years old;
- Australian resident, national (and, if relevant to your country) "domiciled in a state of Australia";
- Single;
- Commodities trader;
- Family wealth from mining opals;
- Bruce has an Aus\$15 M portfolio in Switzerland;
- Bruce also has shares in family mining company in Australia.

Bruce is looking to move to your country for 3-5 years.

3.2 Pre-arrival planning

3.2.1 What pre-arrival tax planning opportunities would you advise? Need to know whether he plans to work in Gibraltar

3.2.2 What are Bruce's tax, residence or other reporting obligations upon becoming resident in your country? Pay income tax and file tax return every year.

When you next meet Bruce 3 years later, life is looking good. He has met fellow Australian Kylie and they are expecting their first child (Jason). Bruce is looking to start his own commodities business and wants to know whether he can invest part of his foreign income or gains in the target company.

Bruce also tells you that his grandfather died in 2011 and that he (together with his 3 cousins) is a beneficiary of a trust structure with a bank account in a sun kissed jurisdiction. The bank account has not been reported in his tax return and he now wonders whether it should have been.

3.3 Lifetime matters

3.3.1 With respect to the commodities business, how would you advise Bruce in relation to:

- (a) the most tax efficient way to make the inward investment?
- (b) any planning and structuring opportunities (including the use of double tax treaties) that Bruce should consider in order to minimise any tax leakage?
- (c) eventually exiting the business. In particular, are there any structuring or other opportunities that Bruce should consider either at the inception of the business or in the run-up to an exit?

Accountant to advise on all these questions.

3.3.2 As to the unreported bank account:

- (a) what would you advise Bruce?
- (b) what are the Trustee's reporting obligations in your country?

Accountant to advise on all these questions

Tragically, some years later still resident - and wealthy - in your country, Bruce dies without making a Will.

3.4 Succession law

- 3.4.1 Do Kylie and Jason have a financial claim against Bruce's estate? Would need to consult a probate lawyer.
- 3.4.2 What inheritance or estate tax (if any) is to be paid and by whom? What steps could Bruce and Kylie have taken in order to mitigate/reduce this tax charge? No inheritance tax in Gibraltar.

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