



Transfer Pricing
Country Summary

Gibraltar

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1. Introduction

Gibraltar is not a member of EU or OECD. Since 2020, Gibraltar has formal transfer pricing documentation requirements to submit the country-by-country reporting and the notification of country-by-country reporting for qualifying multinational groups.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Although Gibraltar is not part of the Organization for Economic Cooperation and Development (OECD), Gibraltarian authorities, the Commissioner of Income Tax, generally accept the OECD Transfer Pricing Guidelines as a specialized technical reference.

Except for that, Georgian TP general principles are provided in Gibraltarian Income Tax Act. Regulations on CbCR can be found in Explanatory Notes on Country-by-Country Reporting Obligations – EU Directives 2011/16 AND 2016/881.

b) Definition of Related Party

According to Article 9(5) of the Income Tax Act, a company is connected with another company:

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

Thereinto, “company” includes any body corporate or unincorporated association, but does not include a partnership, and this paragraph shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company.

c) Nature of Transfer Pricing Documentation

Gibraltar is not a member of OECD, but its TP rules basically follow the OECD TP Guidelines.

Gibraltar anticipated BEPS Action 13, but it has not wholly adopted the rules yet. Thus, the TP documentation regulated in BEPS are not applicable, except for CbCR.

d) Tax Havens & Blacklists

If the actual tax paid on the profits by the company in another jurisdiction is less than 50% of the tax that would have been paid on the same income in Gibraltar, the tax avoidance regime will apply.

e) Advance Pricing Agreement (APA)

According to Income Tax Rules, Taxpayers have the right to request advance tax rulings with a standard form. The Commissioner may consider OECD or other international benchmarks or standards when determining the sufficiency of evidence.

f) Audit Practice

In practice, due to the low corporate tax rate, the requirement to justify TP rarely occurs. The tax authority generally does not challenge the TP method, either.

Ad-hoc querying is frequently raised by the Income Tax Office, though querying concerning TP is not very common.

3. Transfer Pricing Documentation

a) Level of Documentation

Gibraltar partially adopted the requirements of BEPS Action 13 of the OECD. The requirements apply as of financial years starting on or after 1 January 2016. This transfer pricing documentation requires a Country-by-Country Report (pursuant to Annex III to Chapter V of the TP Guidelines) containing certain information relating to the global allocation of the MNE's income and taxes paid together with the list of all constituent entities of the MNE group included in each aggregation per tax jurisdiction.

Local file and master file are not required.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

Except for the reference to OECD, Gibraltarian legislation does not give any specific rules.

f) Economic Analysis – Benchmark Study

There is nothing specific in Gibraltarian legislation.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

Gibraltar does not have concrete regulations regarding financial statements.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

| | Prepare or File? | Format | Deadline | Notification Deadline* | Threshold* (Yes/No) | Local Language (Yes/No)*(If "No", it can be filed in English) |
|---|------------------|-----------------|-------------------------------|------------------------|---------------------|---|
| Corporate Income Tax | File | Electronic | September, 30 th . | No | No | No |
| Master File | N/A | N/A | N/A | N/A | N/A | N/A |
| Local File | N/A | N/A | N/A | N/A | N/A | N/A |
| CbCR | File | OECD Guidelines | September, 30 th . | Yes | Yes | No |
| Local Form | N/A | N/A | N/A | N/A | N/A | N/A |
| Annual Accounts | N/A | N/A | N/A | N/A | N/A | N/A |
| Segmented P&L | N/A | N/A | N/A | N/A | N/A | N/A |
| * Gibraltar has signed the MCAA agreement for the filing of CBCR. | | | | | | |
| * Gibraltar does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises. | | | | | | |

The CbCR must be filed before 12 months after the last day of the reporting fiscal year.

From the date when a return is received, the tax authority has one year to give notice to make an inquiry about a return. After it is expired, the statute of limitations period is six years. However, in the case of fraudulent or willful default or negligent conduct, the limit is twenty years.

j) Mandatory Language

There is no local guidance for language.

k) Notification Requirement

The notification must include whether the constituent entity (CE) is:

- an ultimate parent entity (UPE);
- a surrogate parent entity (SPE); or
- subject to CE reporting (i.e. required to provide a report under section 100)

If the CE does not fall into the above categories, the notification must include the identity and tax jurisdiction of the CE required to file the CbC report on behalf of its MNE group.

Additional notification requirements may apply if the CE is an SPE or subject to CE reporting.

l) Record Keeping

The records must be preserved for six years from the end of the period for which the person is required to deliver a return.

m) Penalties and Interest Charges

For not filing, not filing on time, incomplete or incorrect filing, the taxpayer will receive penalty of GBP 300, plus a further penalty not exceeding GBP 60 for each subsequent day on which the failure continues. The daily default penalty may be increased if the failure continues for more than 30 days.

Additionally, a person providing inaccurate information may be liable to a penalty within GBP 3,000.