Written questions to Gibraltar

Response by Gibraltar

The following information is applicable to many of the questions below. Therefore, we are making the following opening statement in respect of the questions and then we proceed to answer each one individually:

Gibraltar is a fully self-governing and fully self-financing British Overseas Territory to which (until the United Kingdom formally exits the European Union) the Treaties establishing the European Union apply, with only certain exceptions. As a generality, we are within the EU single market for the purposes of the free movement of persons, the freedom to provide services and the free movement of capital. We are not within the Common Customs Union and we do not have to apply a VAT regime.

Thus all relevant EU Regulations apply directly to Gibraltar and all relevant EU Directives are transposed by Gibraltar’s Parliament. This includes all EU measures on financial supervision and regulation, direct taxation and the fight against money laundering. Gibraltar has a diverse and prosperous economy. Our corporation tax rate is 10% and we have a progressive income tax system with a maximum effective rate on personal tax of 25%. Our taxation regime is subject to European Union scrutiny / signoff and it is applied on a non-discriminatory basis.

We are also attaching a Matrix to this document showing the entire list of tax information exchange mechanisms that we have by country in Alphabetical order.

Gibraltar has, pursuant to the various agreements described in the document above, around 150 exchange of information mechanisms to the OECD standard with over 98 countries and territories around the world; a small number of which are pending their ratification (Gibraltar has ratified all of our agreements).

Gibraltar has been supplying bulk tax data on an automatic basis to the United States of America since September 2015 under the terms of the FATCA Intergovernmental Agreement.

Gibraltar has been supplying bulk tax data on an automatic basis to the United Kingdom since 2016 under the Intergovernmental Agreement.

Gibraltar will supply all EU Member States with bulk tax data on an automatic basis as from September 2017 under the Directive on Administrative Cooperation.

Gibraltar will supply all countries that have signed up to the Common Reporting Standard with bulk tax data on an automatic basis as from September 2017 (first wave countries, and the second wave as from 2018).
Written Questions to Gibraltar

1)

- Could you please describe the legal framework on anti-money laundering, tax avoidance and tax evasion that is in place in Gibraltar? More specifically, has Gibraltar made any changes in its tax system to enforce the tools for efficiently analysing tax related information? Could you please explain the changes that have been made, if any?

Gibraltar has draconian all crimes anti money laundering legislation, systems and administrative practices in place deriving from all European Union legislation on this subject. In addition, we have reviewed FATF best practice, have implemented a National Risk Assessment and are assessing Gibraltar’s current legal framework in the context of a forthcoming Moneyval review scheduled for 2018.

Gibraltar also has transposed and put into practice all EU legislation relating to direct taxation.

When it comes to tax avoidance Gibraltar’s income tax regime demands that tax advisers / practitioners disclose to the authorities the use of any structures that have been put in place to avoid taxation that would otherwise have been due in Gibraltar.

The Income Tax Department in Gibraltar has also set up an enhanced special investigations unit.

Our legislation, systems and administrative practices have been independently tested in the past by independent reviews from the Financial Action Task Force, the International Monetary Fund and others and we have been found to have a robust arsenal not only just in place but crucially also in practice.

The Gibraltar Financial Intelligence Unit (which is responsible for, inter alia, the receiving and actioning of suspicious transaction reports) is a member of the international Egmont Group of Financial Intelligence Units (since c. 1996) and shares information systematically as well as spontaneously with all members of the Group around the world.

Tax evasion has a 7 year maximum prison sentence in statute and therefore along with all other serious crime (that has a prison sentence of more than 6 months), is a predicate offence for money laundering and subject to suspicious transaction reporting. For the avoidance of doubt, tax evasion is a predicate offence whether carried out in Gibraltar or elsewhere.

The FATF recently revised their 40 anti-money laundering principles and has urged countries around the world to ensure that their legislation and administrative practices match the new standards. Gibraltar is no exception and is well advanced on legislative drafting to put these new standards (as well as the future 4th anti money laundering directive) into effect. Gibraltar will be peer reviewed (in the same way as large countries such as the United Kingdom and the United States) on the introduction and effectiveness of the new standards in due course.
In 2015, Gibraltar asked to be reviewed on its anti-money laundering compliance by Moneyval and this was agreed. From that date forward, Gibraltar has been participating in all Moneyval meetings.

2) 
- To your knowledge, have there been any changes in Gibraltar’s legislation regarding the fight against tax evasion via a tax credit system? If so, could you please explain which changes have been made? (The question on tax credit system has to do with a clarification on whether Gibraltar has a tax credit system for low incomes or a system where some credits can reduce taxes directly (not depending on general tax rates).

We do not have a tax credit system that applies to corporations that might reduce the amount of corporation tax payable.

As regards individuals and income tax there are two tax credits available in Gibraltar to benefit the average income taxpayer. Both of these are available to individuals under the Allowance Based System. The first, which every taxpayer is eligible for, is equal to the higher of £300 or 2% of the tax payable and the other, which is available for individuals aged 60 and over is £4,000 provided the individual is not in receipt of pension or annuity income in excess of £6,000.

3) 
- Could you please explain how intermediaries, such as banks, lawyers, tax advisors and accountants are regulated in Gibraltar? Is there an official authority to investigate intermediaries involved in practices such as money laundering, tax avoidance or tax evasion in Gibraltar? If so, how long after the Panama Papers revelations was the authority commissioned to investigate? To your knowledge, did it do any other assessments prior to the Panama Papers revelations?

Each and every piece of EU legislation on financial supervision and regulation applies to Gibraltar. Therefore all financial services firms covered by EU law are regulated by the financial services supervisory authority (being the Financial Services Commission, an independent body established by the Gibraltar Parliament.) These firms include but are not limited to eg banks, insurance companies, auditors / accountants, money transmission services, bureaux de change, investment services firms, E-Money firms etc. The regulator also authorises and supervises Trust and Company Service Providers. This sector has been regulated in Gibraltar since 1989. Financial services firms are also specifically supervised by the regulator in terms of compliance with AML procedures. Tax advice, as in most
countries, is generally given by accountants or lawyers. The legal profession in Gibraltar is regulated by the disciplinary committee of the Bar Council and an enhanced regulatory framework is in the process of being put in place.

Tax evasion is a serious criminal offence and is also a predicate offence for money laundering and can therefore be investigated by either the Income Tax Department’s special investigations unit or by the Royal Gibraltar Police Economic Crime Unit.

As regards an official authority to investigate money laundering we have the following:

- **National Co-ordinator Role**
  - Statutory appointment to identify and co-ordinate mitigation of money laundering (ML) / terrorist financing (TF) risks. The Attorney General was appointed to this post.
  - Published National Risk Assessment (NRA) of ML Risks in 2016
  - Finalising separate (non-public) TF Risk Assessment and Non-Profit Sector TF Assessment
  - HM Government of Gibraltar will publish a Strategic Response to the three documents above
  - Stakeholder Authorities have put action plans into effect to mitigate the identified risks.
  - NRA to be revised latter part of 2017

- **4MLD Transposition**
  - Gibraltar will transpose 4MLD by June 2017
  - Legislative reform will also look at FATF compliance identified through Gap Analysis

- **Data Collection**
  - New and enhanced initiatives being conducted to collect Financial crime and international co-operation data
  - Data will be used to formulate revision to NRA and regulatory approaches and help identify risks

- **Regulatory focus**
  - AML/CFT Risk process being introduced by regulators (FSC/OFT and Gaming) which are AML/CFT driven
  - New enforcement powers to be introduced with 4MLD (fines as well as naming and shaming)

- **Resourcing & Training**
  - Additional training of Financial Investigations and Financial Information Officers at stakeholder authorities being rolled out.
  - Economic Crime Unit set-up and running at Royal Gibraltar Police
  - Enhanced Financial Investigation Unit established at HM Customs
  - GCID/GFIU (Criminal Intelligence and Financial Intelligence Units) Additional permanent resources allocated

- **Enforcement**
  - Separate financial investigations now conducted for predicate offences by Law Enforcement
  - Separate prosecutions for money laundering already being sought
  - Confiscation of assets being sought
Assessments on anti money laundering were carried out prior to the establishment of the above but the updated coordinated approach has been put in place due mainly to i) keeping up to speed with developing FATF requirements ii) the Moneyval framework. The Panama Papers have not therefore been the main driver for this.

4)

- 4) In April 2016, right after the Panama Papers revelations, the OECD held a meeting in Paris, bringing together senior tax administration officials from countries worldwide to specifically discuss opportunities for obtaining data, information-sharing and exploring mechanisms for co-operation, where Gibraltar apparently was not present. Could you please explain the reasons of Gibraltar’s abstention? Did Gibraltar provide any follow-up cooperation to the OECD?

Gibraltar was unable to attend this meeting but we are being extremely proactive in terms of providing cooperation and support to other countries. This is principally via tax information exchange both on request and on an automatic basis as from September 2017 via the EU Directive and the Common Reporting Standard. In addition, the Gibraltar Financial Intelligence Unit has been in a position to assist in respect of requests from other countries and continues to be so. Gibraltar has received and answered a small number of requests for information that arose of a result of the Panama Papers.

It should be noted that Gibraltar only has 15,000 companies registered at Companies House. This includes all types of companies whether eg asset holding, trading or simply dormant. This goes some way towards explaining the small numbers of requests made to Gibraltar resulting from the Panama Papers. In addition, last year the United Kingdom will have received bulk tax data on an automatic basis from Gibraltar and other countries will be waiting for bulk data transfer this September under the EU Directive or the Common Reporting Standard.

5)

- According to the national legislation and without going too much into details, could you please describe the procedure of a company registration in Gibraltar? Could you please inform us how long this procedure approximately takes?

Until 30 October 2014, company legislation in Gibraltar was based on the 1930 Companies Act (that was principally based on the 1929 Companies Act of England and Wales). On 1 November 2014, the Companies Act 2014 came into force and the 1930 Companies Act was repealed.
All EU law relating to companies applies in Gibraltar including the filing of accounts publicly at Companies House. The Gibraltar Companies Act also stipulates the information that must be kept in Gibraltar including copies of underlying records etc so as to comply with the OECD effectiveness in exchange of information.

Persons wishing to establish a company would use the services of a licensed Trust and Company provider that is regulated by the financial services regulator.

The procedure for establishing a company is administratively very straightforward and again from an administrative point of view should not take more than a few days. However, the licensed services provider will not authorise use of the company until full due diligence is carried out, identification of the ultimate beneficial owner, background checks on these, source of funds etc. All of this information has to be maintained in Gibraltar.

In addition, the company will not be able to operate a bank account until it is able to satisfy the bank’s full due diligence procedures.

6)

- To your knowledge, in cases of establishment of money laundering and tax evasion, did the responsible persons face any sanctions from public authorities for the activities in offshore structures? Could you please provide us with any examples?

We are aware of several prosecutions for money laundering in recent years including at least one person who had been an authorised individual within a Trust and Company services provider. All such prosecutions led to prison sentences.

7)

- Could you please describe the rules on due diligence, know-your-costumer policy and ultimate beneficial owner principles in Gibraltar? Are these formalities always required, for example, in order to open a bank account?

As per the recital at the beginning of this document, each and every piece of EU legislation on financial supervision, direct taxation and Anti Money Laundering applies in Gibraltar.

This legislation therefore requires all entities specifically caught by the third Anti Money Laundering Directive (as well as Trust and Company service providers; a sector that has been regulated since 1989)
in Gibraltar to do due diligence and full know-your-customer policy on all clients to ensure that they know who the ultimate beneficial owner is or are. This includes checks on, amongst other things, politically exposed persons and the scope will be further widened with the introduction of the 4th Anti Money Laundering Directive and the proposed 5th AMLD when adopted.

When it comes to specific financial services firms such as banks opening accounts for corporate clients and/or individuals, an equally stringent and formal process is involved, including background checks and source of funds on ultimate owners.

As mentioned in the answer to other questions, tax evasion is a serious criminal offence. Financial services firms and all classes of entities caught by the relevant legislation are under an obligation to report individuals to the Gibraltar financial intelligence unit if they suspect that they are not tax declared in their country of residence.

Part of the due diligence and know your customer policy involves documenting the country of residence of ultimate beneficial owners and obtaining their tax identification numbers in their home country. This is to ensure that all firms caught by automatic exchange of information legislation (US FATCA / IGA with the UK / The EU Directive / The Common Reporting Standard) can comply with their obligations to report.

The Financial Services regulator in Gibraltar also issues detailed guidance notes to all firms regulated by them on what is expected so as to be compliant with AML. The regulator also carries out inspection visits.

8)

- The current AML legislation in the EU (and worldwide via FATF standard) requires “obliged entities” to identify the ultimate beneficial owner, and make this information available to competent authorities and financial intelligence units (FIUs). Could you please provide us with information on how Gibraltar complies with this obligation? Are you planning to implement an official record such as the UK’s register on beneficial ownership? Is such a record currently being implemented and what is your official position on the matter, especially regarding who can have access to it? In case the list is not public, do you intend to make it public? Would the register be available online?

Each and every piece of EU legislation relating to Anti Money Laundering is in place in Gibraltar and is being enforced. This is in addition to all EU law on financial supervision and direct taxation.

Thus, all entities (including Trust and Company service providers because they have been regulated since 1989) have to identify the ultimate beneficial ownership of all clients that they are dealing with and maintain such information in Gibraltar so that it can, when and if necessary, be disclosed to authorities. This information includes detailed due diligence on, inter alia, Politically Exposed Persons as well as others. These requirements are enforced by inspection visits. As an example, the Financial
Services regulator in Gibraltar carries out onsite visits on all firms that they supervise including anti money laundering checks.

As regards a Central Register of beneficial ownership, Gibraltar is committed to have such a register in place by the 26th June 2017. This is to ensure that we comply with the terms of the 4th Anti Money Laundering Directive which prescribes the establishment of such a register. In parallel with the Directive, Gibraltar also has a commitment with the United Kingdom to establish a register.

This register will be housed within the Finance Centre Department of the Ministry of Financial Services. Premises have been prepared with workstations and relevant hardware and staff allocated. Software has already been developed. The legislation to bring the register into effect is ready to be implemented by regulations and will be introduced imminently.

Neither the EU Directive nor the commitment with the United Kingdom requires a public register. Therefore HM Government of Gibraltar is introducing a private register of companies and other legal entities (as well as trusts specifically captured by the terms of 4 AMLD) which will be accessible as per the terms of the Directive to, law enforcement and tax authorities, obliged entities and persons with a legitimate interest.

HM Government of Gibraltar will adopt a public register when this becomes a global standard. To date, only 4 or 5 Member States have said that they are adopting a public register.

4 AMLD, in addition, caters for the sharing of Member State registers in due course. HM Government of Gibraltar has also, separately, given a commitment to the new OECD global standard of sharing registers with all countries that sign up to this standard.

9)

- Could you please inform us if Gibraltar requires public country-by-country reporting by companies?

Our laws/regulations do not currently require local filing of a global country-by-country reporting file by large corporate groups. However, country-by-country reporting is a measure contained in Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

Gibraltar has to apply this Directive by the transposition deadline.
On 15 January 2017, Philip Hammond gave an interview to a German newspaper on the outcome of the negotiations between the EU and the UK. He said: “if we are forced to be something different, then we will have to become something different” and “If we have no access to the European market, [...] if Britain were to leave the European Union without an agreement on market access, [...] we could be forced to change our economic model and we will have to change our model to regain competitiveness. And you can be sure we will do whatever we have to do. [...] We will change our model [...] and we will be competitively engaged.”

What is your point of view for this statement? If the UK has less access to the European market, would that change the nature of Gibraltar’s financial activities and if so, could you please explain how? In your opinion, what would be a more favourable outcome for Gibraltar: turning the UK into “something different” with a “changed economic model” “competitively engaged” or keeping financial access to the European market?

Our understanding of the interview referred to above was that the Chancellor of the United Kingdom was referring to a possibility of lowering corporation tax in Britain still further from current levels of under 20% to approximately 15%; as a means or example of maintaining competitiveness without access to eg the single market in financial services going forwards. This does not imply in our view a lowering of standards as a rate of corporation tax is within the right of a sovereign jurisdiction. Indeed, there are a quite a number of EU Member States with rates of corporation tax of 15% or lower.

As regards Gibraltar, when the results of the Brexit referendum were confirmed, HM Government of Gibraltar conducted a study of where Gibraltar financial services businesses were actually carrying out activity with the European Union; particularly in our biggest area which is motor insurance. It turned out that the United Kingdom is our biggest customer for services provided from Gibraltar with an approximate market share of just over 90%.

Therefore, whilst we would prefer to maintain some form of access to the EU single market – as long as no concessions are required on our part that we would find unacceptable – what is critical for us is continued UK access; for which we have a political commitment from the United Kingdom Government. Therefore Gibraltar’s business model will not have to change radically even in the event of what is popularly known as a hard Brexit.

Could you please describe what the impact of UK’s disassociation from the internal market would be for your jurisdiction regarding tax matters, especially concerning compliance with
the requirements of the EU's Anti-Money Laundering Directive and its subsequent revisions? Could you please describe to what extent does Gibraltar currently comply with the Directive?

Further to the recital at the beginning of this document, Gibraltar complies fully with all EU legislation (whether Directives or regulations) on anti-money laundering; being for example the 3rd Anti Money Laundering Directive.

We are currently ready to transpose the 4th Anti Money Laundering Directive by the deadline date of 26th June 2017 and this will be done on time.

We are also following closely the proposal on the 5th Anti Money Laundering Directive and will transpose this when it is adopted and a transposition deadline is established.

Post the United Kingdom (and therefore Gibraltar) definitively leaving the European Union, HM Government of Gibraltar will continue to apply all existing EU laws on Anti Money Laundering and tax information exchange that are in place.

From that date forwards, HM Government of Gibraltar will face a choice of voluntarily choosing to adopt further examples of EU driven legislation or to adhere to international standards deriving from for example the Financial Action Task Force (FATF); both choices lead to the same result namely adherence with the latest developments in Anti Money Laundering.

12)

- Could you please explain Gibraltar’s relationship with the UK, especially regarding the legal framework and the exchange of information in tax matters?

- Could you please provide information on the cooperation between your Government and the British Government on Tax Affairs?

Gibraltar is a British Overseas Territory of the United Kingdom and is a separate and distinct legal jurisdiction. Gibraltar is fully self financing and self governing. However, the United Kingdom retains responsibility for defence and foreign affairs. As well as certain aspects relating to internal security.

The relationship with the United Kingdom in respect of exchange of information in tax matters is essentially the same as with any other country with which Gibraltar has tax information exchange mechanisms in place. Gibraltar has a TIEA with the United Kingdom.

In September 2016, Gibraltar supplied bulk tax data on an automatic basis to the United Kingdom under the terms of the Intergovernmental Agreement. Similar bulk data on an automatic basis will be supplied, commencing September 2017 to i) all Member States of the EU ii) all countries that have implemented the Common Reporting Standard.

Please also see the answer to question 13 below which is also relevant to the United Kingdom.
Has Gibraltar received any requests for tax information exchange from other Member States? To your knowledge, what is the average response time to these requests? Where there any cases of refusal to provide the information required, and if so, could you please explain what were the reasons for it?

Yes Gibraltar, from time to time, receives requests for tax information exchange from Member States of the European Union as well as other countries around the world such as, for example, the USA and Australia.

The requests for tax information can be via one of three distinct mechanisms (all of which are OECD equivalent) at the choice of the Member State:

1) A bi-lateral tax information exchange agreement (TIEA) if there is one in place
2) The Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation
3) The OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters which was extended to Gibraltar with effect from 1 March 2014, providing for tax information exchange between Gibraltar and all countries and territories that have ratified the Convention.

As a generality, most Member States that are active in making requests use a TIEA. One Member State in particular uses the Directive. We have received one request from a Member State via the Multilateral Convention.

We have received approximately 155 requests for tax information from 10 Member States under TIEAs since 2010. Virtually all of these have been responded to within 90 days.

We have received circa 90 requests under the EU Directive from 5 Member States since 2013 to date. Approximately 20 are currently pending being answered. The overall average response time is approximately 120 days.

Our target response time is within 90 days for a TIEA and our target response time is within 180 days where the Directive is being used; clearly we would wish to respond as soon as possible regardless of the legal mechanism that is being utilised by the requesting State.

As regards a refusal to answer a request for information, this can only occur when the requesting State has not provided enough information to justify the information sought in the context of the legal mechanism being used. The requesting country may not have provided any evidence linking a particular individual or entity to a bank account in Gibraltar.

A refusal by Gibraltar to answer information is very rare and has only happened on a handful of occasions in the context of a total of circa 270 requests sent to us since 2009 from all countries including Member States. This would have been on the basis that they were not specific enough and did not meet the criteria.

You will be aware, that the OECD uses a review procedure (applicable to large and small countries alike) to ensure not only that the jurisdiction being examined has the necessary legal framework in
place but more importantly to ascertain how effective that jurisdiction is being in the practice of receiving and answering or declining requests for information; this is called a Phase 2 review.

The 115 page Phase 2 Review report on Gibraltar found that we were Compliant (top grade) in 7 out of the 10 essential elements examined and Largely Compliant (second highest grade) in the remaining 3. Our overall rating was Largely Compliant; the same as eg the United Kingdom, Germany and the United States of America.

Gibraltar has, pursuant to the various agreements described above and the Convention, around 150 exchange of information mechanisms to the OECD standard with over 98 countries and territories around the world; a small number of which are pending their ratification (Gibraltar has ratified all of our agreements).

14) According to national legislation, could you please explain if there is currently in place a tax benefits system for non-residents in Gibraltar?

Gibraltar does not operate a tax benefits system for non-residents.

However, Gibraltar does have a fiscal regime for high net worth individuals – called Category 2 Status – wishing to become resident in Gibraltar but benefit from a maximum amount of income tax payable which is circa £30,000. This residence programme does not offer citizenship.

There are approximately 320 individuals with Category 2 Status in Gibraltar. Over half of these individuals are British Citizens that have moved from the United Kingdom to take up residence in Gibraltar. The balance are overwhelmingly other EU / EEA or Swiss citizens. There are very few individuals resident in Gibraltar under this programme from other parts of the world.

Individuals applying for this status need to have a house or apartment in Gibraltar for their exclusive use and that of their family, need to supply a bank character reference, a further character reference from a professional such as an accountant, proof of source of funds / wealth etc.

The vast majority of individuals apply via Gibraltar based professionals such as accountants and lawyers who will have carried out their due diligence / know your customer enquiries. More in-depth due diligence is carried out automatically by us on all non EU, non EEA, non Swiss nationals although we reserve the right to also carry this out on a case by case basis on other citizens depending on particular circumstances.

Applicants are advised that the issue of Category 2 status by Gibraltar authorities does not protect them from being tax resident elsewhere if they overstay in a particular country or otherwise create a nexus with a third country.
• Could you provide information on the current state of the European Commission’s investigation on tax rulings in Gibraltar? To your knowledge, how many tax rulings are currently in force in Gibraltar and in which sectors?

By decision adopted October 1, 2014, as amended on March 4, 2015, the Commission opened a formal state aid investigation procedure into the practice of tax rulings in Gibraltar (Case SA.34914 (C/2013) — (ex 2013/NN)). The Decision was notified in its final form to the United Kingdom on September 1, 2016 and was published in the Official Journal on October 7, 2016. The Decision is by way of extension to the Commission’s previous decision to investigate the tax treatment of interest and royalties under Gibraltar’s Income Tax Act 2010.

The Decision on Tax Rulings has been challenged by the Gibraltar Government before the General Court (Case T-783/16). The Gibraltar Government is challenging the Decision on procedural grounds, namely, that if the practice of tax rulings constitutes state aid at all, which is strongly denied, it would be existing aid and not new aid and the adoption of the Decision is therefore unjustified. That case is currently pending before the Court.

At the same time, the Commission is pursuing its administrative investigation into the practice of Tax Rulings. It sent its latest request for further information on 16 February 2017, to which the Gibraltar Government replied on 31 March 2017.

The Gibraltar Government has cooperated, and continues to cooperate, fully with the Commission in its investigation. It has provided voluminous information, including copies of rulings that have been issued.

The Gibraltar Government remains confident that the practice of tax rulings in Gibraltar does not constitute state aid at all.

The full list of tax rulings was published by the EU and details are available on their website. Some of the main headings in respect of the activities/functions include asset holding, property & investment holding, group holding and provision of services (e.g. consultancy/advisory/marketing).