

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,839 of 10th March, 2011

B. 03/11

BILL

FOR

AN ACT to amend the Income Tax Act 2010, the Rates of Tax Rules, 1989, the Income Tax (Pay As You Earn) Regulations 1989, the Income Tax (Allowances, Deductions and Exemptions) Rules 1992, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Income Tax (Amendment) Act 2011.

Commencement.

2.(1) Subject to subsections (2) and (3) this Act comes into operation on the day of publication.

(2) Sections 4, 5 and 6 shall be deemed to have come into operation on 1 July 2010.

(3) Section 7 shall be deemed to have come into operation on 1 January 2011.

(4) For the avoidance of doubt, section 24 of the Interpretation and General Clauses Act restricting the retrospective commencement of subsidiary legislation shall not apply to subsidiary legislation made under sections 4 to 7.

Amendment of Income Tax Act.

3. In section 27 of the Income Tax Act 2010 for the words “of section 25” substitute the words “of sections 24 or 25”.

Amendment of Rates of Tax Rules.

4.(1) The Rates of Tax Rules, 1989 (“the Rates Rules”) are amended in accordance with the provisions in this section.

(2) In rule 3A(1) of the Rates Rules for the paragraphs—

“the next £75,000 of assessable income at the rate of 29 per cent;
the remainder of assessable income at the rate of 35 per cent.”

substitute the following paragraphs—

“the next £328,000 of assessable income at the rate of 29 per cent;
the next £351,800 of assessable income at the rate of 20 per cent;
the next £295,200 of assessable income at the rate of 10 per cent;
the remainder of assessable income at the rate of 5 per cent.”.

(3) In rule 3(1A) of the Rates Rules—

- (a) in paragraph (a) for “10 per cent” substitute “8 per cent”;
- (b) in paragraph (b) for “£5,000” substitute “£6,000”;
- (c) in paragraph (c) for “£4,000” substitute “£5,000”;
- (d) in paragraph (d) for “£3,000” substitute “£4,000”;
- (e) in paragraph (e) for “£2,000” substitute “£3,000”;
- (f) in paragraph (f) for “£1,000” substitute “£2,000”;

(4) After rule 3(1A) of the Rates Rules insert the following subrules—

“(1B) Subject to the provisions of subrules (1A) and (1C) to (1F), this subrule applies where the assessable income of an individual exceeds £25,000 but does not exceed £25,999–

- (a) for the purposes of this subrule, the amount of the assessable income to which the rate of zero per cent applies shall be deemed to be £2,000 (“deemed assessable income”);
- (b) the deemed assessable income referred to in this subrule shall be reduced by the sum of £2 in respect of each £1 that exceeds such assessable income of £25,000; and
- (c) tax shall be charged at the rate of 20 per cent on the assessable income after the reduction calculated in accordance with paragraph (b).

(1C) Subject to the provisions of subrules (1A), (1B) and (1D) to (1F), where the assessable income of an individual exceeds £25,999 but does not exceed £35,000 tax shall be charged at the rate of 20 per cent.

(1D) Subject to the provisions of subrules (1A) to (1C), (1E) and (1F), this subrule applies where the assessable income of an individual exceeds £35,000 but does not exceed £36,642–

- (a) for the purposes of this subrule, the amount of the assessable income to which the rate of zero per cent applies shall be deemed to be £3,284 (“deemed assessable income”);
- (b) the deemed assessable income referred to in this subrule shall be reduced by the sum of £2 in respect of each £1 that exceeds the assessable income figure of £35,001; and
- (c) tax shall be charged at a rate determined in accordance with subrule (1E) on the assessable income after the reduction calculated in accordance with paragraph (b).

- (1E) Subject to the provisions of subrules (1A) to (1D) and (1F), where the assessable income of an individual exceeds £35,000 but does not exceed £100,000 tax shall be charged at a reduced rate determined by the formula-

$$\left(\frac{A}{B} \times 100 \right) - \frac{1}{2} \text{ per cent}$$

Where-

A is the tax calculated in accordance with the following bandings-

the first £25,000 of assessable income at the rate of 20 per cent;

the next £75,000 of assessable income at the rate of 29 per cent; and

B is the amount of the assessable income of an individual to which this subrule applies.

- (1F) Subject to the provisions of subrules (1A) to (1E), this subrule applies where the assessable income of an individual exceeds £100,000 but does not exceed £100,861-
- (a) for the purposes of this subrule, the amount of the assessable income to which the rate of zero per cent applies shall be deemed to be £1,722 (“deemed assessable income”);
 - (b) the deemed assessable income referred to in this subrule shall be reduced by the sum of £2 in respect of each £1 that exceeds the assessable income figure of £100,001; and

- (c) tax shall be charged at a rate determined under rule 3A(1) on the assessable income after the reduction calculated in accordance with (b).”.

(5) After rule 3A(3) of the Rates Rules insert the following subrule—

“(4) In the case of an individual to whom the provisions of this rule apply, the amounts of assessable income and deemed assessable income specified in this rule shall be reduced by one-twelfth for each calendar month in the year of assessment during which that individual does not carry on, exercise or undertake any trade, business, profession or employment in Gibraltar.”.

Amendment of PAYE Regulations.

5.(1) The Income Tax (Pay As You Earn) Regulations 1989 (“the PAYE Regulations”) are amended in accordance with the provisions in this section.

(2) For regulation 10 of the PAYE Regulations substitute the following regulation—

“Statement made by employer on appropriate form.

10.(1) An employer in relation to any year of assessment preceding but not including the year of assessment commencing 1 July 2007 may be required by the Commissioner in pursuance of a notice issued under regulation 17, to deliver to the Commissioner in respect of each of his employees a statement on the appropriate form (deduction card) containing—

- (a) the employee’s gross emoluments payable on each pay day; and
- (b) the tax deducted in accordance with these regulations; and
- (c) such information as the Commissioner may require.

(2) The Commissioner may, at any time after the end of the year of assessment and in relation to that year of assessment, by

notice published in the Gazette or in pursuance of notice issued under regulation 17, require the employer to deliver to the Commissioner a statement on the appropriate form (summary statement) containing—

- (a) all individual employees gross emoluments paid; and
 - (b) the tax deducted from the gross emoluments in accordance with these Regulations in respect of each such employee; and
 - (c) any other information that the Commissioner may require.
- (3) The Commissioner may accept the deduction cards referred to in subregulation (1), and the summary statement referred to in subregulation (2), as the return required by section 56 of the Act.
- (4) The requirements of subregulations (1) and (2), shall not apply in relation to emoluments exempt from tax under rule 3 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.”.

(3) After regulation 17(3) of the PAYE Regulations insert the following subregulation—

- “(4) The Commissioner may by the service of a notice in writing on the employer in the form and manner provided for in subregulation (3), require the employer to submit to him—
- (a) any deduction card referred to in regulation 10;
 - (b) any summary statement referred to in regulation 10.”.

(4) After regulation 19(1)(g) of the PAYE Regulations insert the following paragraphs—

- “(h) fails to deliver to the Commissioner a deduction card as required by notice issued by the Commissioner under regulation 17;

- (i) fails to deliver to the Commissioner a summary statement as required by notice published in the Gazette under regulation 10;
- (j) fails to deliver to the Commissioner a summary statement as required by notice issued by the Commissioner under regulation 17.”.

Amendment of ADE Rules.

6.(1) The Income Tax (Allowances, Deductions and Exemptions) Rules 1992 (“the ADE Rules”) are amended in accordance with the provisions in this section.

(2) In rule 3 of the ADE Rules—

- (a) in subrule (35) delete the words “for Trade and Industry”;
- (b) in subrule (46) for “£300” substitute “£1,120”.

(3) In rule 6(1) of the ADE Rules for “2735” substitute “£2,812”.

(4) In rule 7 of the ADE Rules—

- (a) in subrule (1) for “£2560” substitute “£2,632” on both occasions that those sums appears;
- (b) in sub-rule (3) for “£2735” substitute “£2,812”.

(5) In rule 7A(1) of the ADE Rules for “£2650” substitute “£2,724”.

(6) In rule 8(1) and (4) of the ADE Rules for “£970” substitute “£997”.

(7) In rule 9 of the ADE Rules for “£1075” substitute “£1,105”.

(8) In rule 12 of the ADE Rules for “£2560” substitute “£2,632”.

(9) In rule 14A(1) of the ADE Rules for “£995” substitute “£1,023”.

(10) In rule 15(1) of the ADE Rules—

- (a) for “£370” substitute “£380”; and
 - (b) for “£360” substitute “£380”.
- (11) In rule 16A(2) of the ADE Rules—
- (a) for “£10,590” substitute “£10,887”;
 - (b) in paragraph (a), for “£2735” substitute “£2,812”; and
 - (c) in paragraph (b), for “£2560” substitute “£2,632”.
- (12) In rule 16C of the ADE Rules—
- (a) in the heading of the rule for “£3,600” substitute “£3,700”;
and
 - (b) in subrules (1) and (2) for “£3,600” substitute “£3,700”.
- (13) In rule 17 of the ADE Rules for “£610” substitute “£627”.
- (14) In rule 18 of the ADE Rules—
- (a) for “£2735” substitute “£2,812”;
 - (b) for “£135” substitute “£139”;
 - (c) in paragraph (a), for “£2550” substitute “£2,622”; and
 - (d) in paragraph (d), for “£185” substitute “£190”.
- (15) In rule 20A(1) of the ADE Rules for “£1090” substitute “£1,120”.
- (16) In rule 22 of the ADE Rules—
- (a) In subrule (1) for the words “Subject to sub-rules (2), (2A), (3) and (8)” substitute the words “Subject to sub-rules (2), (2A), (3), (8) and (9)”;
 - (b) after subrule (8) insert the following subrule—

- “(9) Any deduction allowable under this rule shall only be allowed in respect of interest paid to a bank or building society or other financial institution licensed to take deposits under the Financial Services (Banking) Act.”.

Further amendment of ADE Rules.

7.(1) The Income Tax (Allowances, Deductions and Exemptions) Rules 1992 (“the ADE Rules”) are further amended in accordance with the provisions in this section.

- (2) For rule 2 of the ADE Rules substitute the following rule—

“Meaning of “child”.

2. In these Rules, unless the context otherwise requires, “child” includes a stepchild, an illegitimate child, and a child adopted in accordance with an order made by a Court of Competent Jurisdiction.”.

(3) In rule 3 of the ADE Rules subrules (26), (27), (35), (40), (41) and (45) are revoked.

(4) Rules 5, 5A, 5B, 5C, 5D, 5E, 25, 26 and 28 of the ADE Rules are revoked.

- (5) For rule 6A of the ADE Rules substitute the following rule—

“Limitation on entitlement to Allowances Based System for Individuals.

- 6A. Subject to the provisions of this rule and rule 20, an individual who elects to be chargeable under the Gross Income Based System for the purposes of rule 3A of the Rates of Tax Rules, 1989 shall not be entitled to claim the deductions specified in rules 6, 7, 7A, 8, 9, 12, 13, 14, 14A, 15, 16, 16A, 16B, 16C, 17, 18, 19 20A, 21, and 22.”.

(6) In rule 6B of the ADE Rules after subrule (5) insert the following subrule—

“(6) Where the individual is married and (but for subrule (1)) in respect of a year of assessment—

- (a) the individual satisfies rule 7(1)(a), and is eligible to claim the deduction mentioned in that rule; and
- (b) the individual claims any of the deductions specified in rules 7, 7A, 8, 9, 12, 13, 14, 14A, 16, 17, 18, 19, 20A, 21 and 22; and
- (c) the claim for deductions referred to in paragraph (b), is in the form and manner as the Commissioner may prescribe,

then the spouse of the individual shall not be entitled to claim any deduction mentioned in paragraph (b) that has been claimed by the individual in relation to that same year of assessment.”.

(7) In rule 7 of the ADE Rules subrules (3) and (4) are revoked.

(8) For rule 24 of the ADE Rules substitute the following rule—

“Entitlement to specified deductions for non resident individuals.

24.(1) Subject to the provisions of these Rules and subrules (2) and (3) below, any person who is a non resident individual and who is in receipt of a pension accruing in Gibraltar shall be entitled to claim the deductions, allowances and reliefs set out in rules 6 to 21 of these Rules as if that person was resident in Gibraltar throughout the year of assessment.

(2) The allowances, deductions and reliefs referred to in subrule (1) above, shall not be given so as to reduce the amount payable by the person below the amount which bears the same proportion to the amount which would payable by way of tax by the person; if the tax is chargeable upon the total income from all sources possessed by the person (including income which is not subject to tax chargeable in Gibraltar) as the amount of income subject to tax so charged, bears to the amount of the income of that person from all sources.

- (3) For the purposes of subrule (2) above, relief in respect of foreign tax paid shall be left out of account in computing—
- (a) the amount of tax payable by an individual; and
 - (b) the amount which would be payable by the individual by way of tax if the tax is chargeable on the total income possessed by that individual from all sources including income which is not subject to tax charged in Gibraltar.”.

- (9) For rule 29 of the ADE Rules substitute the following rule—

“Allowances and deductions subject to return of income being made and proof of claim.

29. No allowances and deductions provided for by these Rules shall be granted, nor shall tax be charged at less than the standard rate, unless a person makes a claim for those allowances and deductions in a return of income on the proper form or in such form and manner as the Commissioner may prescribe, and that claim contains any particulars and is supported by proof as the Commissioner may require.”.

EXPLANATORY MEMORANDUM

This Bill amends the Income Tax Act 2010 to reinstate the provision that allowed for the retrospective amendment of rates of tax.

The Bill also amends—

- (i) the Rates of Tax Rules, 1989,
- (ii) the Income Tax (Pay As You Earn) Regulations 1989; and
- (iii) the Income Tax (Allowances, Deductions and Exemptions) Rules 1992,

so as to give effect to measures announced in the last budget, and to ensure consistency with the provisions of the Income Tax Act 2010.

Clause 2(4) makes it clear that section 24 of the Interpretation and General Clauses Act, restricting the retrospective commencement of subsidiary legislation, does not apply to the amendments being made under clauses 4 to 7.

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