

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,329 of 5th January, 2017

B. 2/17

BILL

FOR

AN ACT to amend the Income Tax Act 2010.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Income Tax (Amendment) Act 2017 and comes into operation on the day appointed by the Minister by notice in the Gazette.

Amendment of the Income Tax Act 2010.

2.(1) The Income Tax Act 2010 is amended in accordance with this section.

(2) After section 12 insert-

“Taxation of Foundation Beneficiaries.

12A.(1) Tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for each year of assessment or accounting period upon the income of any person ordinarily resident in Gibraltar received from a foundation by him as a beneficiary of that foundation which can be matched with the taxable income of the foundation of the year or period in which it was received by it or any previous or future year or period.

(2) For the purposes of subsection (1) income received by the beneficiary shall include-

- (a) any distribution of income of a foundation made to, on the directions of, or for the benefit of a beneficiary;
- (b) any benefit derived by the beneficiary of a foundation from the use of assets owned or leased by the foundation or any person substantially controlled by the foundation;
- (c) any loan made by the foundation to a beneficiary of that foundation or to any person connected (which has the meaning given in paragraph 9 of Schedule 4) with the beneficiary;

and for the purposes of this subsection-

- (i) a distribution from a foundation shall whilst the foundation has any income or accumulated undistributed income be treated as having been made out of that income or accumulated income before it is made out of the capital of the foundation;
- (ii) the benefit derived from the use of assets owned by a foundation or any body substantially controlled by the foundation shall be deemed to be the amount it would cost the foundation on the open market to provide the assets for the use of the beneficiary for the year if it did not already own them;
- (iii) the benefit of the use of an asset leased by a foundation or any body substantially controlled by the foundation shall be the cost to the foundation or the body substantially controlled by the foundation of the provision of the asset;
- (iv) where the Commissioner believes that any benefit derived by a beneficiary of a foundation who is a minor is so derived by the minor rather than the parent or guardian of the minor for the purpose of the avoiding of taxation on the parent or guardian then that benefit shall be deemed to be derived by the parent or guardian of the minor.

- (3) For the purpose of subsection (1)–
- (a) the income of a foundation which is to be matched with income received by a beneficiary in computing the charge to tax of the beneficiary shall be limited to income which is or was chargeable to tax in Gibraltar on the foundation;
 - (b) the income received by a beneficiary, or, if more than one beneficiary receives income in a year of assessment, the aggregate of the income received by the beneficiaries in the year of assessment shall first be matched against the income chargeable to tax on the foundation in that year of assessment;
 - (c) any excess of the income of the beneficiary or beneficiaries over the income chargeable to tax on the foundation for the year will be matched with any income chargeable to tax on the foundation from previous years commencing with the year in which this section came into effect on a first in first out basis;
 - (d) the matching of income between current year and previous year income chargeable to tax on the foundation will be established on a pro rata basis between each beneficiary who receives income in the year of assessment;
 - (e) income chargeable to tax on the foundation which has been used for matching in accordance with (b) to (d) above shall not be used again for matching but any income chargeable to tax on the foundation which is not used for matching in the year of assessment or any income chargeable to tax on the foundation for previous years which is not used for matching in the year of assessment, will be available for matching in future years of assessment;
 - (f) a beneficiary who is assessed to tax by virtue of subsection (1) will be entitled to set off against his liability any tax paid by or credited to the foundation in Gibraltar in respect of the matched income.

- (4) For the purposes of this section-
- (a) “substantially controlled” shall have the same meaning as those words are given in Schedule 4;
 - (b) “taxable income” means income which is or has been subject to tax in Gibraltar or would be subject to tax in Gibraltar if the foundation was ordinarily resident in Gibraltar for the purposes of this Act.”

- (3) After section 13 insert-

“Taxation of Foundations.

13A.(1) A foundation resident in Gibraltar shall be charged to tax at the rate set out in the Rates of Tax Rules, 1989, in respect of income taxable in accordance with section 11.

(2) For the purposes of the taxation of foundations, a foundation shall be resident in Gibraltar unless persons who are ordinarily resident in Gibraltar and the issue of such persons have been irrevocably excluded from benefit.

(3) For the purposes of this section and section 12A, an individual who has Category 2 Status in accordance with the Qualifying (Category 2) Individuals Rules 2004 or the spouse or a child of that individual in respect of whom an election has been made under rule 11 of those Rules which has not been withdrawn or become invalid shall be deemed to be not tax resident in Gibraltar.

(4) Where a foundation that is not resident in Gibraltar receives income from a source which accrued in or derived from Gibraltar and which has suffered tax under this Act the foundation shall not be liable to further tax on that income.

(4) In section 28(1) for the words “subsections (2) to (7)” substitute “subsections (2) to (12)”.

- (5) In section 28 after subsection (7) insert-

“(8) In the case of a foundation–

- (a) at least one of whose councillors is a Gibraltar resident body corporate holding a licence issued under Section 8 of the Financial Services (Investment and Fiduciary Services) Act and classified as a Class VII licence under Schedule 1 to the Financial Services (Licensing) Regulations 1991;
- (b) which has no liability to tax under this Act; and
- (c) whose beneficiaries (if any) have no liability to tax under this Act,

subsection (9) shall apply.

- (9) The councillors of a foundation referred to in subsection (8) shall not be required to make a return in accordance with subsection (1), and subsection (10) shall apply to such a foundation.
- (10) Every councillor referred to in subsection (8)(a) shall make a declaration to the Commissioner that he is not councillor of any foundation to which subsection (8) does not apply, except the foundations identified in that declaration.
- (11) The declaration referred to in subsection (10) shall be made to the Commissioner not later than the 30th November each year in respect of the year of assessment ending in that year.
- (12) An incorrect declaration made by a councillor in accordance with subsection (10) above shall be an offence for the purposes of section 66 of this Act.”.

(6) In section 74, after the definition of “executor” insert-

““foundation” means a foundation registered under the Private Foundations Act 2015;”.

(7) In Table A of Schedule 1 substitute paragraph (1) with the following-

“(1) The profits or gains of a company, a foundation or a trust from any trade, business, profession or vocation.”.

(8) In paragraph 9 of Schedule 4, after subparagraph (3) insert-

“(3A) A foundation is connected with-

- (a) any individual who in relation to the foundation is a founder,
- (b) any person who is connected with such individual, and
- (c) any body corporate which is connected with that foundation,

and for the purposes of this paragraph a body corporate is connected with a foundation if-

- (d) it is a private company and the participators include the foundation; or
- (e) it is controlled (within the meaning of paragraph 10) by a company falling within paragraph (d) above.”.

(9) In paragraph 9 of Schedule 4, after the definition of “control” in subparagraph (9) insert-

““founder” shall have the meaning ascribed to it in sections 2 and 5 of the Private Foundations Act 2017 and shall further include any person who endows assets directly or indirectly to or upon a foundation or who has made with any other person a reciprocal arrangement for that other person to endow assets directly or indirectly to or upon a foundation;”.

EXPLANATORY MEMORANDUM

This Bill amends the Income Tax Act 2010 by-

-) inserting new section 12A;
-) inserting new section 13A;
-) amending section 28;
-) amending section 74;
-) amending paragraph (1) of Table A of Schedule 1; and

J amending paragraph (9) of Schedule 4.

Section 12A makes provision for the taxation of the beneficiaries of a Gibraltar resident foundation.

Section 13A makes provision for the taxation of Gibraltar resident foundations.

Section 28 is amended to impose on the councillor(s) of a Gibraltar foundation the obligation to make a declaration to the Commissioner that he is not the councillor of any foundation liable to pay tax under the Act or any foundation whose beneficiaries are liable to pay tax under the Act, except any foundations identified in that declaration.

Section 74 is amended to include the definition of a foundation for the purposes of the Act.

Table A of Schedule 1 is amended to provide that a Gibraltar foundation will be liable to tax on the profits or gains accrued or derived in Gibraltar from any trade, business, profession or vocation.

Paragraph (9) of Schedule 4 is amended for the purposes of defining “connected persons” in relation to a Gibraltar foundation.

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