

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4665 GIBRALTAR Thursday 20th February 2020

B. 4/20

BILL

FOR

AN ACT to amend the Income Tax Act 2010.

ENACTED by the Legislature of Gibraltar.

Short title.

1. This Act may be cited as the Income Tax (Amendment) Act 2020.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Income Tax Act 2010.

3.(1) The Income Tax Act 2010 is amended in accordance with the provisions of this section.

(2) In the Long Title after “thereof” insert “, and to provide for the implementation of international agreements on taxation matters”.

(3) In section 3(1), insert the words “this or” after the words “Save as provided in”.

(4) Insert the following section after section 3-

“International agreements on taxation matters.

3A.(1) This section applies to International Tax Agreements.

(2) The Minister must, by notice in the Gazette, publish the texts of International Tax Agreements.

(3) The Minister must specify in Schedule 11 in relation to every International Tax Agreement –

- (a) the name of the country, territory or international organisation with whom the International Tax Agreement has been concluded;
 - (b) the date of signature of the International Tax Agreement;
 - (c) the number and date of the Legal Notice in the Gazette in which the International Tax Agreement is published; and
 - (d) once it is known, the date on which the International Agreement becomes operative.
- (4) The Minister may, by notice in the Gazette, amend, add to, delete from, revoke or replace Schedule 11.
- (5) This Act shall apply to an International Tax Agreement with the effect from the date on which both of subsections (2) and (3) shall have been complied with in respect of that International Tax Agreement.
- (6) Where the termination provisions contained in an International Tax Agreement have been exercised, the Minister must give public notice of that termination by notice in the Gazette.

Giving effect to International Tax Agreement.

3B.(1) This section applies for the purposes of enabling the Commissioner to give effect to the terms of any International Tax Agreement.

- (2) Where any provision of an International Tax Agreement purports to affect how a tax in Gibraltar is to be charged, determined, calculated, assessed or collected or any matter is to be determined under this Act (a “Relevant Provision”) –
- (a) if this Act does not contain a provision dealing with the subject matter of a Relevant Provision, that Relevant Provision shall have direct legal effect as if it were set out in this Act; and
 - (b) if this Act contains a provision to a contrary or different effect to a Relevant Provision (an “Existing Provision”), that Relevant Provision shall have direct legal effect by way of modification of the Existing Provision in so far as (but only in so far as) is required to implement or comply with that Relevant Provision in respect of that International Tax Agreement.
- (3) The Commissioner shall have the rights, powers, functions and duties required to enable him to implement and comply with an International Tax Agreement.

Appointment of members of bodies established by an International Agreement.

3C. Where an International Tax Agreement provides for the establishment of a co-ordination committee, liaison body or any other committee or body for the

purposes of performing any functions or duties under an International Agreement, the members of all such bodies to be appointed on behalf of Gibraltar shall be appointed by the Minister by notice in the Gazette and such notice may include such duties or other conditions, including but not limited to the term of appointment, as the Minister deems appropriate.

Power to make regulations for carrying out an International Tax Agreement.

3D.(1) The Minister may from time to time make regulations generally for carrying out the provisions of an International Tax Agreement.

(2) Without prejudice to the generality of the foregoing, regulations made by the Minister under this section may make provision –

- (a) for any power, procedure, process or other matter which, in the opinion of the Minister, is necessary or desirable to implement or give effect to the provisions of an International Tax Agreement;
- (b) for matters relevant to the administration and enforcement of tax laws including the determination, calculation, collection or assessment of a tax referred to in an International Tax Agreement, or for matters incidental thereto, or to the investigation or prosecution of criminal tax matters, or any other matter provided for in an International Tax Agreement;
- (c) to require any person to make to the Commissioner and/or as the Minister may otherwise specify a full and complete return of any information relating to any matter provided for in an International Tax Agreement at times and in a manner and form specified by the Minister by notice in the Gazette;
- (d) for the purpose of enabling the members of the bodies mentioned in section 3C to perform their functions or duties under any International Agreement and in relation to any matter contained therein;
- (e) adding to, deleting from, modifying or replacing Schedule 11;
- (f) constituting offences in respect of the breach of any obligation imposed on any person under regulations made under this section, and providing penalties for committing any such offences;
- (g) for any other matter required to be specified, prescribed or provided for in this Act to enable implementation of and compliance with an International Tax Agreement or in connection with the operation thereof.

3E. Save as may be expressly provided for in this Act, nothing in this Act shall authorise or empower any person to carry out in Gibraltar any duty or function or exercise any power in relation to the implementation or operation of an International Tax Agreement.”

(5) Insert the following sections after section 6B –

“Information Powers: Implementation of International Tax Agreement.

6C.(1) Notwithstanding any other provision of this or any other Act to the contrary the Commissioner, and every person authorised by him to do so, may –

- (a) require any person to provide him, at the times, in the manner and in the form specified by him, with any information that he requires to comply with or implement an International Tax Agreement; and
- (b) provide any information obtained by him under this or any other Act to -
 - (i) any body referred to in section 3C and any person who is a member of any such body; and
 - (ii) any other person or entity to whom he is required to provide that information under an International Tax Agreement.

(2) Notwithstanding any other provision of this or any other Act to the contrary any body referred to in section 3C and any person who is a member of any such body may provide information obtained by it or him to any other person or entity to whom he is required to provide that information under an International Tax Agreement.”.

(6) Insert the following section after section 30–

“Returns required for the purposes of International Tax Agreements.

30A.(1) Notwithstanding the provisions of sections 28, 29 and 30 of this Act, the Minister may make regulations to enable the Commissioner to issue to any person a return of information required for complying with an International Tax Agreement.

(2) The return referred to in subsection (1) must be in the form specified by the Minister by notice in the Gazette.”.

(7) After section 37(8) insert –

“(8A) This section shall not apply to tax paid or payable under this Act by any person on income accruing in or derived from Gibraltar to which this section would otherwise apply only by virtue of the fact that the country in which he is resident for tax purposes charges that income to tax on the basis of his residence in that country.”.

(8) Insert the following section after section 65F-

“Penalty for failure to comply with requirements relating to an International Tax Agreement.

65G.(1) A person who has failed to-

- (a) deliver a return by the date required by the Commissioner in accordance with regulations made under section 30A;
- (b) make a full and complete return as may be required by or under regulations made under section 30A; or
- (c) provide to the Commissioner, or any person authorised by him, any information or document required in accordance with section 6C,

is liable to a penalty of £500.

(2) An appeal shall lie to the Tribunal from a penalty incurred under this section and on any such appeal the Tribunal may either confirm or set aside the penalty.”.

(9) In section 74 (Interpretation), add the following after the definition of “foundation” –

““International Tax Agreement” means an agreement–

- (a) on matters relating to taxation including but not limited to co-operation and co-ordination in matters relevant to the administration and enforcement of tax laws including the determination, calculation, collection or assessment of a tax, or matters incidental thereto and the protection of financial interests and the exchange of information;
- (b) entered into by the Government, or entered into on behalf of, or extended to, Gibraltar with the agreement of the Government; and
- (c) with one or more countries, territories or international organisations.”.

(10) Insert the following Schedule after Schedule 10–

“SCHEDULE 11

INTERNATIONAL AGREEMENTS

Section 3A

The Table in this Schedule sets out the following information–

- (a) in column 1, the name of each of the countries, territories or international organisations with which the International Agreement is concluded;

- (b) in column 2, the date of the International Agreement;
- (c) in column 3, the date opposite the name of the country or territory is the operative date for the application of the International Agreement with that country or territory; and
- (d) in column 4, the references set out opposite the name of the country or territory correspond to the number and date of the Legal Notice in the Gazette in which the International Agreement concluded with that country or territory is published.

Column 1	Column 2	Column 3	Column 4
Country	Date of Agreement	Date on which Agreement becomes operative	Date and number of Legal Notice in which Agreement was published

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Explanatory Memorandum

This Act amends the Income Tax Act 2010 to enable the powers under the Act to be used for and in connection with international agreements on taxation matters which are listed in Schedule 11 and to make provision for the making of regulations to carry out the provisions of such international agreements.

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