

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4780 GIBRALTAR Thursday 12th November 2020

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B. 26/20

## 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 No.3) Act 2020.

**Commencement.**

2. This Act shall be deemed to have come into operation on 1 July 2016, save for section 3(2) which shall be deemed to have come into operation on 1 July 2018.

**Amendments to Income Tax Act 2010.**

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

(2) After section 20(4) insert –

“(5) For the purposes of this section, a change in ownership means a change in effective control, whether by virtue of a change in direct or indirect ownership of voting shares together with a change in beneficial ownership.

**Transfer of allowable trade losses.**

20A.(1) Subject to the provisions of this section, where a trade or business is transferred to a separate legal entity and is part of a group restructure, any corresponding unrelieved tax losses arising previously in relation to that trade or business may be available to be set off against future profits of that separate legal entity.

(2) The transferred unrelieved tax losses referred to in subsection (1) above, shall only be available to set off against future profits if that trade or business would have been taxable under the provisions of this Act had it given rise to taxable profits.

- (3) No set off shall be given under subsection (1) above, if within any period of three years from the date of transfer, there is a—
- (a) change in the ultimate ownership of the company; and
  - (b) major change in the nature or conduct of that trade or business.
- (4) The unrelieved tax losses available for set off under subsection (1) above, shall be restricted proportionally, on the basis of income attributable to each share of the trade, to that part of the trade or business transferred.
- (5) For the purposes of this section, a change in ownership means a change in effective control, whether by virtue of a change in direct or indirect ownership of voting shares together with a change in beneficial ownership.
- (6) For the purposes of this section “group restructure” includes a re-organisation, take-over, merger or sale of a trade or business.”.
- (3) After section 77(1) insert –
- “(1A) An individual who between 6 July 2016 and 5 January 2017-
- (a) remits to Gibraltar any money which –
    - (i) is held outside Gibraltar; and
    - (ii) represents the product of income accrued and derived in Gibraltar; or
  - (b) holds an asset outside Gibraltar purchased with income accrued and derived from Gibraltar,
- shall on the payment of the penalty charge set out in subsection (1B), not be liable to a further charge to tax on the money remitted or the asset held.
- (1B)The penalty charge for the purposes of subsection (1A) is 7.5% of the-
- (a) sum of monies remitted under subsection (1A)(a); or
  - (b) value of the asset referred to subsection (1A)(b) on the date of purchase.”.
- (4) In section 77(2) after-
- (a) “subsection (1)” insert “and (1B)”; and
  - (b) “monies” insert “or assets”.

(5) In section 78(1) substitute “on or after 22 December 2015” with “between the period 22 December 2015 and 5 July 2016, or on or after 5 January 2017,”.

(6) After section 78(1) insert –

“(1A) Where on or after 5 January 2017, the Commissioner receives information, pursuant to the procedures for the exchange of information between tax authorities, that an asset –

- (a) is held outside Gibraltar;
- (b) was purchased with monies from income accrued and derived in Gibraltar; and
- (c) information regarding such monies has not been included in any return so as to allow the Commissioner to assess its chargeability to tax under the Act,

the Commissioner shall issue a penalty charge which corresponds to 100% of the tax due under this Act.”.

(7) In Schedule 3, Part IV, after paragraph 17 insert -

**“Tax credit for Start-Ups.**

17A.(1) Where the Commissioner is satisfied on the application of a company, limited partnership or limited liability partnership that-

- (a) the said company or partnership commenced business in Gibraltar on or after 5 July 2016 but before 1 July 2017;
- (b) such business relates to a bona-fide new activity in Gibraltar;
- (c) the business does not represent a transfer of business previously existing in Gibraltar or the allocation of profits from a business previously existing in Gibraltar; and
- (d) employs at least five employees in its first year of trading or business,

the Commissioner may direct that the said company or partnership shall be eligible for a tax credit in respect of its first 3 years of trading or business which is equal to the tax due in a year of assessment or accounting period, as the case may be, up to a maximum of £50,000 per year.

(2) The tax credit available in a year of assessment or accounting period, as the case may be, shall not be available for carry forward or set off in any other year of assessment.

**Tax credit for properties.**

17B.(1) Where the Commissioner is satisfied that a property –

- (a) was rented for residential purposes; and
- (b) constructed between 1 July 2016 and 1 January 2019,

the owner of such property shall be entitled to a tax credit in accordance with this paragraph.

- (2) The tax credit shall be equal to the tax payable on any profits earned by the owner of the property during the first 24 months of rental income.
- (3) The rental income must be received within the first five years following the date of completion of the development in which the property is located.
- (4) No tax credit shall be permitted under this paragraph unless the claim for the tax credit is accompanied by a certificate of completion of development.”.

(8) In Schedule 6, Part 1 substitute paragraph 1 with -

- “1.(1) Subject to subparagraph (2), any Company falling within paragraphs 3 to 17 of this Schedule shall be liable to pay tax at the higher rate of 20% of the taxable income of that company under this Act for each accounting period.
- (2) A company falling within paragraph 3 of this Schedule shall be liable to pay tax at the higher rate of 20% only on taxable income made from the provision of services described in subparagraphs (1) to (9) of paragraph 3.”.

**EXPLANATORY MEMORANDUM**

This Bill amends the Income Tax Act 2010 to introduce appropriate budget measures announced in the 2016 and 2018 Budget Speech.

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