

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5126 GIBRALTAR Thursday 1st February 2024

B. 6/24

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 2024.

Commencement.

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

Amendment to Act.

3. In Part III of Schedule 3 to the Income Tax Act 2010, for paragraph 15 substitute—

“15.(1) Subject to subparagraph (2), in computing the profits or gains of a person other than an individual, any sum accrued as interest or similar amounts shall be included in the computation of the profits or gains of the business as trading income and such profits or gains shall be deemed to be accrued in and derived from Gibraltar.

(1A) For the purposes of this paragraph “similar amounts” means, the profit or gain arising to a person to whom subparagraph (1) applies from—

- (a) any instrument paying a recurring amount of income calculated by reference to a transaction for the lending of money whether such instrument directly evidences a transaction pursuant to which money is loaned or advanced or is a derivative instrument referencing such a transaction and whether or not such amount is paid to the initial parties to such an instrument or to a person to whom the benefit of such instrument is assigned or otherwise transferred;
- (b) lending, advancing or otherwise generating income from virtual assets by means of an arrangement under which, in return for value (calculated in

relation to a percentage of the value or number of those virtual assets or otherwise benchmarked to their characteristics)–

- (i) another person or entity is permitted to use the virtual assets; or
- (ii) the virtual assets are used to validate transactions on a proof of stake blockchain or any similar consensus mechanism;
- (c) discounts; or
- (d) any other arrangement (whether legally enforceable or not) in relation to which it is reasonable to assume that the main purpose, or one of the main purposes, of those arrangements is the avoidance of the charge to tax on interest under this paragraph.

(1B) Subparagraph (1A)(b) applies whether the profit or gain to the person concerned arises from–

- (a) the use, for the purpose in that subparagraph, of virtual assets which belong to that person or which the person holds on behalf of others; or
- (b) the person facilitating the use of another person’s virtual assets for that purpose and receiving any part of any value which arises,

and in subparagraph (1A)(b) “virtual asset” has the meaning given in section 7(1) of the Proceeds of Crime Act 2015.

(2) Subparagraph (1) shall only apply to the income of a person other than an individual–

- (a) which carries on the activity of money lending to members of the general public or which advertises or announces itself or holds itself out in any way as carrying on that business or actually carries on that business whether solely or jointly with any other business, trade or vocation;
- (b) which is in receipt of interest on funds derived from the regulated activity of accepting deposits as set out in paragraph 3 of Schedule 2 to the Financial Services Act 2019 other than with related counterparts or the proceeds of investment of that interest, which has been placed on deposit with, invested with or loaned to any person;
- (c) which has permission under Part 7 of the Financial Services Act 2019 to carry on the regulated activity of effecting or carrying out contracts of insurance; or
- (d) which has permission under Part 7 of the Financial Services Act 2019 to carry on the regulated activity of using distributed ledger technology for the storage or transmission of value belonging to another.

(3) Where a person other than an individual is in receipt of interest which is not taxable in accordance with subparagraph (2), no deduction or expense shall be allowed solely in relation to any amount of interest expended or incurred for the purpose of generating the interest.

(4) Where a person other than an individual (the disponor) is chargeable under subparagraph (2) and disposes of any instruments or assets which may give rise to interest or similar amounts to a connected person and such instruments or assets do give rise to interest or similar payments and such interest or similar amounts would be taxable in the hands of the disponor if the disposal had not occurred, then such profits or gains shall form part of the assessable income of the disponor as if the disposal had not occurred.

(5) Subparagraph (4) shall not apply to any person who provides evidence to the satisfaction of the Commissioner that the avoidance of tax was not the main purpose or one of the main purposes of the disposal.

(6) This paragraph applies with effect for accounting periods beginning on or after 1st February 2024.

(7) This paragraph applies subject to section 18.”.

EXPLANATORY MEMORANDUM

This Bill amends the Income Tax Act 2010 by substituting paragraph 15 of Schedule 3 in order to widen its application with regard to financial services.

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