

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,993 of 21st August, 1997



I ASSENT,
MICHAEL ROBINSON,
ACTING GOVERNOR,
6th August, 1997



GIBRALTAR

No. 24 of 1997

AN ORDINANCE to amend the Income Tax Ordinance.

ENACTED by the Legislature of Gibraltar.

Title and Commencement.

1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance 1997 and shall come into effect on such day as the Government may by notice in the Gazette appoint and different days may be so appointed for different purposes and such notice may make such transitional and supplementary provisions as in the opinion of the Government are necessary to give proper effect to the Ordinance.

Amendment to section 57.

2. Section 57 of the Income Tax Ordinance (hereinafter called "the principal Ordinance") is amended –

- (a) in subsection (1) by –
 - (i) omitting the word "notice" and substituting therefor the word "request";
 - (ii) omitting the word "require" and substituting therefor the word "ask";
 - (iii) omitting the words "within a reasonable time,";
- (b) in subsection (2) by omitting the word "required" and substituting therefor the word "asked";
- (c) by omitting subsection (3).

Repeal of section 58.

3. Section 58 of the principal Ordinance is repealed.

Repeal of section 59.

4. Section 59 of the principal Ordinance is repealed.

Repeal of section 60.

5. Section 60 of the principal Ordinance is repealed.

Repeal of section 62.

6. Section 62 of the principal Ordinance is repealed.

Repeal of section 64.

7. Section 64 of the principal Ordinance is repealed.

Repeal of section 66.

8. Section 66 of the principal Ordinance is repealed.

Repeal of section 70.

9. Section 70 of the principal Ordinance is repealed.

Repeal of section 71.

10. Section 71 of the principal Ordinance is repealed.

Amendment to section 72.

11. Section 72 of the principal Ordinance is amended –

(a) in subsection (1) by -

- (i) omitting the words "appears to be" and substituting therefor the words "he has reason to believe may be";
- (ii) omitting the comma after the word "tax" and inserting thereafter the words "for a year of assessment";
- (iii) omitting the words "the expiration of the time allowed to such person for the delivery of the return provided for in section 57" and substituting therefor the words "30th September of that year of assessment";

(b) by inserting after subsection (1) the following new subsection -

“(1A) Where the Commissioner has reason to believe that the source of income which gives rise to the liability has ceased before 30th September in the year of assessment, he shall proceed to assess the person

as soon as possible after the date of cessation of the source of income.";

(c) in subsection (3) by –

(i) omitting the comma after the word "accordingly" and substituting therefor a full stop;

(ii) by omitting the words "but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return".

Repeal of section 73.

12. Section 73 of the principal Ordinance is repealed.

Amendment to section 76.

13. Section 76 of the principal Ordinance is amended by omitting the number "79" and substituting therefor the number "77".

Repeal of section 77.

14. Section 77 of the principal Ordinance is repealed and replaced with the following new section –

"77. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists, a notice stating the amount of his assessable income, the tax payable by him, the place at which such payment should be made, and informing him of his rights under subsection (2):

Provided that where a person has applied under section 76 to be dealt with through agents in the United Kingdom and has applied for and been granted permission to make payment of the tax in the United Kingdom the Commissioner may direct that the notice of assessment shall be served by the agent in the manner above prescribed:

Provided further that nothing in the above proviso shall affect the

responsibility of the manager of any corporate body under section 51 for the payment of tax.

- (2) (a) If any person disputes an assessment he may appeal against that assessment by notice in writing addressed to the Commissioner within 21 days from the date of the service of the notice of assessment.
- (b) Any appeal under (a) above shall be to the Income Tax Ordinance Tribunal (in this section and section 77A referred to as "the Tribunal").
- (c) The notice of appeal against any assessment shall state the grounds of the appeal, but on the hearing of the appeal the Tribunal may allow the appellant to put forward any ground not specified in the notice, and take it into consideration if satisfied that the omission was not wilful or unreasonable.
- (3) (a) If the person disputing the assessment was prevented from making the appeal within the specified period owing to absence from Gibraltar, sickness or other reasonable cause, he may apply to the Commissioner for the appeal to be brought out of time.
- (b) Where the Commissioner is satisfied that the applicant was so prevented and that the application was made thereafter without unreasonable delay the Commissioner shall consent to the application; where the Commissioner is not satisfied he shall refer the application to the Tribunal.
- (4) Where a person, who has appealed against an assessment made on him, agrees with the Commissioner as to the amount at which he is liable to be assessed before the matter is heard by the Tribunal, the like consequences shall follow as if the appeal had been determined, or the assessment confirmed, by the Tribunal in the agreed amount on the same date as the agreement is reached between that person and the Commissioner.
- (5) Notice of any amended assessment as determined on appeal shall be served by the Commissioner on the appellant,

either personally or by registered post; and any additional tax shall be due and payable in full within one month after such service, and if it is not paid within that period the provisions of section 84 shall apply.

(6) Nothing in subsection (5) shall require payment of tax to be made earlier than would be required under section 82 had no appeal been brought."

Amendment to Part V.

15. Part V of the principal Ordinance is amended by inserting after section 77 the following new section 77A –

"77A (1) Any person who has been assessed and who:

- (a) has appealed against the amount of the income assessed;
or
- (b) has reason to believe that the tax payable on the assessment will be reduced by an excess of allowances which he is entitled to claim over those given in the assessment,

may submit an application to the Commissioner to have postponed collection of all or part of the tax shown as payable on the assessment.

(2) An application under subsection (1) shall be made in writing to the Commissioner within twenty one days of the service of the notice of assessment and shall state the amount in respect of which postponement is sought together with the precise grounds for the application for postponement.

(3) If the Commissioner is satisfied that owing to absence from Gibraltar, sickness or other reasonable cause, the person making the application was prevented from making it within the period in subsection (2), he may extend the period as may be reasonable in the circumstances.

(4) Where the person assessed is able to adduce sufficient evidence to satisfy the Commissioner with regard to the amount of tax which should be postponed, the Commissioner shall agree the postponement application by notice in writing.

(5) Where the person assessed is not able to adduce sufficient evidence to satisfy the Commissioner with regard to the amount of tax he has applied to have postponed:

- (a) if insufficient evidence has been adduced to support an application for postponement of any part of the tax, the Commissioner shall refuse the application by notice in writing;
 - (b) if evidence has been adduced which is insufficient to support that application by the person assessed in full but which indicates that part of the tax should be postponed, the Commissioner shall determine the amount of tax to be postponed and notify the person assessed of his decision by notice in writing.
- (6)(a) Any person who is aggrieved by a refusal or determination of the Commissioner under subsection (5) above may appeal against that refusal or determination to the Tribunal.
- (b) An appeal under (a) above shall be made in writing addressed to the Commissioner within twenty one days of the date of the refusal or determination.
- (7)(a) Any amount of tax postponed in respect of an application made under subsection (1) (a) shall be postponed until the earlier of:
- (i) 90 days after the date of the agreement or final determination of the amount to be postponed; or
 - (ii) 30 days after the date the Commissioner serves his notice of agreement, confirmation or determination of the amount assessable in respect of the assessment for which application for postponement has been made.
- (b) Any amount of tax postponed in respect of an application made under subsection (1)(b) shall be postponed until the earlier of:
- (i) 30 days after the end of the year of assessment for which the assessment is made; and

(ii) 30 days after the agreement by the Commissioner of the tax payable for the year of assessment.

(c) Nothing in (a) and (b) above shall require payment of tax to be made earlier than would be required under section 82 had no application been made.

(8) For the purposes of calculating any penalty due under section 84, the postponement of collection of tax under this section shall not affect the due and payable date of any tax which is ultimately found to be due."

Repeal of section 79.

16. Section 79 of the principal Ordinance is repealed.

Amendment to section 80.

17. Section 80 of the principal Ordinance is amended by –

- (a) omitting the words "objection or" wherever they appear;
- (b) omitting the word "sections" and substituting therefor the word "section";
- (c) omitting the expression "and 79";
- (d) inserting after the word "determined" where it appears for the first and second time, the words "or confirmed";
- (e) omitting the comma after the word "appeal" where it appears for the second time.

Repeal of Section 81.

18. Section 81 of the principal Ordinance is repealed.

Repeal of section 82.

19. Section 82 of the principal Ordinance is repealed and replaced by the following new section –

"82(1) Tax for any year of assessment shall be due and payable at the place stated in the notice of assessment under section 77 in two equal instalments.

(2) The first instalment shall be due and payable not later than the 31st March in the year of assessment or within 30 days after the issue of the assessment whichever date is the later.

(3) The second instalment shall be due and payable not later than 30th June in the year of assessment or within 60 days after the issue of the assessment whichever date is the later."

Amendment to section 83.

20. Section 83 of the principal Ordinance is amended –

- (a) in subsection (1) by omitting the expression "or 85";
- (b) in subsection (2) -
 - (i) by omitting paragraph (a);
 - (ii) in paragraph (b) by omitting the words "the amount of the income returned or, if default is made in making such return or the Commissioner is dissatisfied with such return, in";
- (c) in subsection (4) -
 - (i) by omitting the words "objection and";
 - (ii) by omitting the expression "and 79";
 - (iii) by omitting the words "objection or".

Repeal of section 85.

21. Section 85 of the principal Ordinance is repealed.

Amendment to section 88.

22. Section 88 of the principal Ordinance is amended in subsection (3) –

(a) by omitting the words "objection and";

(b) by omitting the words "objection or" wherever they appear.

Repeal of section 90.

23. Section 90 of the principal Ordinance is repealed and replaced with the following new section –

“90(1) A person guilty of an offence provided for by this Ordinance or legislation subsidiary thereto for which no other penalty is specifically provided, is liable on conviction to a fine at level 3 on the standard scale.

(2) A person who fails to comply with the requirements of this Ordinance or of a notice served on him under this Ordinance is guilty of an offence against this Ordinance.”.

Amendment to section 91.

24. Section 91 of the principal Ordinance is amended at subsection (1) (a) by omitting the words "of which he is required by this Ordinance to make a return".

Amendment to the Ordinance.

25. The principal Ordinance is amended by the addition of the following Schedule after Part VI -

"SCHEDULE 1

Section 77

THE INCOME TAX ORDINANCE TRIBUNAL

PART I

ADMINISTRATION.

Appointment of Tribunal.

1.(1) For the purpose of exercising such powers relating to appeals and other matters as are conferred on them by the Income Tax Ordinance and any legislation subsidiary thereto there shall be Members of the Income Tax Ordinance Tribunal.

(2) Members of the Tribunal shall be appointed by the Chief Minister by notice in the Gazette and shall hold office for a period of one year or for such other period of time as is specified in the notice of appointment.

(3) The Accountant General shall pay Members of the Tribunal by way of reimbursement of expenses such amounts as he may determine appropriate.

(4) A Member of the Tribunal shall not continue in office after he attains the age of seventy-five years.

(5) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of them, or by a failure to observe the requirements of the last preceding sub-paragraph.

Appointment of Clerk.

2. (1) A clerk to the Tribunal and, if it is necessary, a deputy clerk shall be appointed by the Chief Minister by notice in the Gazette and shall hold office for a period of one year or for such other period of time as is specified in the notice of appointment.

(2) A person appointed under the preceding sub-paragraph shall act under the direction of the Members of the Tribunal.

(3) The Accountant General shall pay a clerk such remuneration in respect of his services as he may determine.

(4) The Members of the Tribunal may, after consulting the Chief Minister, dismiss their clerk.

(5) A clerk or deputy clerk shall not continue in office after he has attained the age of seventy years unless the Chief Minister thinks it desirable

in the public interest to extend his term of office; and the term shall not be extended beyond the age of seventy five years.

Personal interest.

3. No Member of the Tribunal shall act as such in relation to any matter in which he has a personal interest, or is interested on behalf of another person, except with the express consent of the parties to the proceedings.

Declaration.

4. (1) Every person who is appointed to be a Member of the Tribunal or a clerk or deputy clerk to the Tribunal shall make a declaration in the following form;

"I, [name] do solemnly declare that I will impartially and to the best of my ability execute the duties of my office; and that I will not disclose any information received by me in the execution of those duties except for the purposes of those duties or for the purposes of any prosecution for an offence relating to the Income Tax Ordinance, or in such other cases as may be required by law."

(2) A declaration made under the preceding sub-paragraph by a Member of the Tribunal shall be made before another Member of the Tribunal, or before the Chief Secretary to the Government of Gibraltar.

(3) Every person who is appointed to be a clerk or deputy clerk shall make the declaration before a Member of the Tribunal.

(4) A declaration under this paragraph shall be made as soon as may be after the first appointment to the office in question.

PART II

PROCEDURE

Quorum.

5. (1) A Tribunal hearing any proceedings shall, where possible, comprise at least three Members but the validity of any proceedings before a Tribunal

shall not be challenged where the Tribunal in question is comprised of two Members.

(2) The Members comprising a Tribunal shall decide which one of them shall preside at the hearing of proceedings before them.

(3) Proceedings before any Tribunal may be continued by any one or more of the Members of the Tribunal if all the parties give their consent.

Procedure.

6. (1) Any party to proceedings which are to be heard by the Tribunal may serve notice on the clerk that he wishes a date for the hearing to be fixed.

(2) On receipt of a notice under sub-paragraph (1) above the clerk shall send notice to each party of the place, date and time of the hearing.

(3) Unless the parties otherwise agree or the Tribunal otherwise directs, the date of the hearing specified in a notice under sub-paragraph (2) above shall not be earlier than twenty eight days after the date on which the notice is sent to the parties.

Attendance of Commissioner.

7. The Commissioner or any officer appointed under section 3(1) may attend every appeal, and shall be entitled –

- (a) to be present during all the time of the hearing and at the determination of the appeal; and
- (b) to give reasons in support of the assessment or other decision against which the appeal is made.

Privacy of proceedings.

8 (1) Subject to sub-paragraph (2) below any proceedings before a Tribunal shall be heard in private.

(2) The clerk and any staff of the Tribunal may be present at the hearing of any proceedings before a Tribunal and may remain present during the deliberations of the Tribunal but shall take no part in those deliberations.

Adjournment.

9.(1) If it is shown to the satisfaction of the Tribunal that owing to absence, sickness or other reasonable cause any person has been prevented from attending the hearing of an appeal on the day fixed for that purpose, they may postpone the hearing of his appeal for such reasonable time as they think necessary, or admit the appeal to be made by any agent, clerk or servant on his behalf.

Representation.

10. At the hearing of any proceedings before the Members of the Tribunal –

- (a) a party other than the Commissioner may be represented by any person whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than a person who is legally qualified or any accountant or auditor, that is to say any person who has been admitted as a member of an incorporated society of accountants or who is registered as an auditor under the provisions of the Auditors Registration Ordinance to represent a party at the hearing.
- (b) the Commissioner may be represented by a lawyer or any officer of the Income Tax Department.

Procedure in Hearings.

11(1) At the beginning of the hearing of any proceedings the Tribunal shall, except where it considers it unnecessary to do so, explain the order of proceeding which it proposes to adopt.

(2) The Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification and determination of the issues before it and generally to the just handling of the proceedings and, so far as it appears to it appropriate, shall seek to avoid formality in its procedure.

(3) The parties shall be heard in such order as the Tribunal shall determine and shall be entitled –

- (a) to give evidence;
- (b) to call witnesses;
- (c) to question witnesses including other parties who give evidence; and
- (d) to address the Tribunal both on the evidence and generally on the subject matter of the proceedings.

(4) In assessing the truth and weight of any evidence; the Tribunal may take account of its nature and source, and the manner in which it is given.

(5) Evidence before the Tribunal may be given orally or, if the Tribunal so directs, by affidavit or a statement made or recorded in a document, but at any stage of the hearing the Tribunal may, on the application of any party or of its own motion, require the personal attendance as a witness of –

- (a) the maker of an affidavit; or
- (b) the maker of such a statement; or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded.

(6) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Tribunal decisions.

12(1) Any decision of the Tribunal shall be made by the votes of the majority of the Members comprising that Tribunal and, in the event of an equality of votes, the Member presiding at the hearing shall be entitled to a second or casting vote.

(2) The final determination may be given orally by the presiding Member of the Tribunal at the end of the hearing or may be reserved and in either event shall be recorded in a document which will be signed and dated by the presiding Member of the Tribunal.

(3) The Clerk shall send to each party a notice setting out the final determination recorded under sub-paragraph (2) above.

(4) Except where the final determination is given at the end of a hearing, it shall be treated as having been made on the date when the notice is sent to the parties under sub-paragraph (3) above.

(5) Every notice sent to parties under sub-paragraph (3) above shall give details of the procedure available where the party is dissatisfied with the decision of the Tribunal on a point of law.

PART III

POWERS

Power to vary assessments.

13 (1) If, on appeal, it appears to the Tribunal, by examination of the appellant on oath or affirmation or by other evidence, that the appellant is overcharged by any assessment, the assessment shall be reduced accordingly, but otherwise the assessment shall stand good.

(2) If on any appeal it appears to the Tribunal that the person assessed ought to be charged in an amount exceeding the amount contained in the assessment, the assessment shall be increased accordingly.

(3) Where, on an appeal against an assessment which –

- (a) assesses an amount which is chargeable to tax; and
- (b) charges tax on the amount assessed,

it appears to the Tribunal as mentioned in sub-paragraph (1) or (2) above, it may, unless the circumstances of the case otherwise require, reduce or, as the case may be, increase only the amount assessed; and where any appeal is so determined the tax charged by the assessment shall be taken to have been reduced or increased accordingly.

Information Power.

14. The Tribunal may at any time before the determination of an appeal give notice to the appellant or any other party to the proceedings (not being the Commissioner or an officer of the Commissioner) requiring him within a time specified in the notice –

- (a) to deliver to it such particulars as it may require for the purposes of determining the appeal; and
- (b) to make available for inspection by it, or by any officer of the Commissioner, all such books, accounts or other documents in his possession or power as may be specified or described in the notice, being books, accounts or other documents which, in the opinion of the Tribunal issuing the notice, contain or may contain information relating to the subject matter of the proceedings.

(2) Any officer of the Commissioner may, at all reasonable times, inspect and take copies of, or extracts from, any particulars delivered under sub-paragraph (1)(a) above; and any officer of the Commissioner may take copies of, or extracts from, any books, accounts, or other documents made available for his inspection under sub-paragraph (1)(b) above.

(3) If any person fails to comply with a notice served under this paragraph, the Tribunal may summarily determine a penalty against him not exceeding £500 and, if the failure continues after the determination of such penalty, a further penalty or penalties not exceeding £50 for each day on which the failure continues after the day on which the penalty was determined (but excluding any day for which a further penalty has already been determined).

Power to summons witnesses.

15(1)(a) Subject to (b) below, the Tribunal may summon any person (other than the appellant) to appear before them and give evidence.

- (b) Any agent or servant of the appellant, and any other person confidentially employed in the affairs of the appellant, may refuse to give evidence under oath or affirmation or to answer any questions to which he objects.

(2) Subject to (1)(b) above, a person who after being duly summoned-

- (a) neglects or refuses to appear before the Tribunal at the time and place appointed for that purpose; or
- (b) appears, but refuses to be sworn; or
- (c) refuses to answer without good cause questions concerning the matter under consideration,

shall incur a penalty not exceeding £100.

PART IV

APPEAL TO THE SUPREME COURT

Appeal to Supreme Court.

16(1) Within twenty one days after the final determination of any proceedings, any party to the proceedings, if dissatisfied with the determination or decision as being erroneous in point of law, may by notice served on the Clerk and on payment of a fee of £100 to the Clerk require the Tribunal to state and sign a case for the opinion of the Supreme Court.

(2) If the Tribunal is not satisfied that the question identified is a question of law or if the fee has not been paid, it may refuse to state a case.

(3) The case stated in accordance with this paragraph shall be prepared and brought in accordance with rules 29 to 34 of the Supreme Court Rules.

(4) The Supreme Court shall hear and determine any question of law arising on a case stated and transmitted to it under rule 32 of the Supreme Court Rules and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Tribunal with the opinion of the Court thereon, or make such other order in relation to the matter as the Court may see fit.

(5) Where a party to an appeal against an assessment has required a case to be stated then despite the fact that a case is required to be stated or is pending before the Supreme Court tax shall be paid in accordance with the determination of the Tribunal.

PART V

MISCELLANEOUS

Irregularity.

17. Any irregularity resulting from any failure to comply with any provision of this Schedule or with any direction given by the Tribunal before the Tribunal has reached its final determination shall not of itself render the proceedings void.

Form of Notices.

18. Every notice required by this Schedule shall be in writing unless the Members of the Tribunal authorise it to be given orally.

Service of notices etc.

19. Any notice or document required or authorised by this Schedule to be sent, delivered to or served on any person shall be duly sent, delivered or served in accordance with section 5.

Penalties.

20 (1) Any penalty determined by the Tribunal under this Schedule shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

(2) An appeal against the summary determination of any penalty under this Schedule shall lie to the Supreme Court.

PART VI

INTERPRETATION

Interpretation.

21. In this Schedule unless the context otherwise requires –

"the Clerk" in relation to any proceedings, means the Clerk to the Tribunal.

"party" means a party to any proceedings.

"proceedings" means –

- (a) any appeal to the Tribunal under the Income Tax Ordinance;
- (b) any proceedings before the Tribunal which under the Income Tax Ordinance are to be heard and determined in the same way as such an appeal; and
- (c) any proceedings which relate to the summary determination of a penalty within the power of the Tribunal.

"Tribunal" in relation to any proceedings, means, subject to paragraph 5(3) two or more, but not more than five, Members of the Income Tax Ordinance Tribunal before whom the proceedings are brought."

Repeal of the Income Tax (Appeals) Rules.

26. The Income Tax (Appeals) Rules are revoked.

Amendment to the Income Tax (Allowances, Deductions and Exemptions) Rules 1992.

27. Rule 27A of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 is repealed.

Passed by the Gibraltar House of Assembly on the 22nd day of July, 1997.

D. J. REYES,

Clerk to the Assembly

