

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,993 of 21st August, 1997



I ASSENT,
MICHAEL ROBINSON,
ACTING GOVERNOR.

6th August, 1997



GIBRALTAR

No. 26 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) (No.2) 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 Part 1.

2. Part 1 of the Income Tax Ordinance is amended by inserting after section 4 the following new sections 4A and 4B –

“Disclosure to competent authorities of member States.

4A. (1) For the purpose of this section and section 4B the Commissioner of Income Tax shall act as competent authority within the meaning of the Directive in relation to the requirements of that Directive as respects Gibraltar.

(2) The Commissioner may disclose to the competent authority of another member State information in a particular case except where it appears to him that the competent authority requesting the information has not exhausted its own usual sources of information which it could have utilised according to the circumstances to obtain the information requested.

(3) The Commissioner shall regularly exchange information without prior request with the competent authorities of other member States for categories of cases which he shall determine with them under the consultation procedure laid down in Article 9 of the Directive.

(4) The Commissioner shall without prior request forward information of which he has knowledge to the competent authority of another member State in the following circumstances,

- (a) he has grounds for supposing that there may be a loss of tax in the other member State;
- (b) a person liable to tax obtains a reduction in, or an exemption from, tax in Gibraltar which

would give rise to an increase in tax or to liability in the other member State;

- (c) business dealings between a person liable to tax in Gibraltar and a person liable to tax in another member State are conducted through one or more countries in such a way that a saving in tax may result in Gibraltar or in the other member State or in both;
- (d) he has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- (e) information forwarded to him by the competent authority of the other member State has enabled information to be obtained which may be relevant in assessing liability to tax in that State.

(5) The Commissioner may, under the consultation procedure laid down in Article 9 of the Directive, extend the exchange of information provided for in subsection (3) to cases other than those specified therein.

(6) This section and section 4B shall apply notwithstanding any law imposing obligations of secrecy on the Commissioner.

(7) In section 4B and in this section, "the Directive" means Council Directive 77/799/EEC.

Conditions for disclosure.

4B.(1) The Commissioner shall not disclose information to the competent authority of another member State unless the conditions set out in this section are met.

(2) The conditions are that -

- (a) the competent authority of the member State to which information is to be disclosed has undertaken to observe rules of confidentiality with respect to the information which are not

less strict than those applying to that information in Gibraltar; and

- (b) the disclosure of information to that competent authority will not lead to the disclosure of -
 - (i) a commercial, industrial or professional secret or of a commercial process; or
 - (ii) of information whose disclosure would be contrary to public policy.

(3) Subject to subsections (4) and (5) where the conditions set out in this section are met the Commissioner shall arrange for the conduct of any enquiries necessary to obtain the information requested by the competent authority of another member State; and for that purpose the provisions of this Ordinance conferring powers on the Commissioner to call for information or documents shall have effect as if the references in those provisions to a tax liability included a reference to a liability to tax on income or capital in another member State.

(4) Nothing in this section or section 4A shall impose an obligation on the Commissioner to conduct any enquiry or provide information to the competent authority of another member State where any law would prevent him from conducting such enquiry or collecting or using such information for the purposes of his functions under the remainder of this Ordinance.

(5) The Commissioner may refuse to provide information where the competent authority of the member State requesting that information is unable for practical or legal reasons to provide similar information.

(6) All information made known to the Commissioner under the Directive shall be kept secret in the same manner as information received by him under the provisions of this Ordinance and in any case may,

- (a) be made known only to the persons directly involved in the assessment of the tax or in the administrative control of such assessment and in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing of an income or corporation tax assessment and (except where the competent authority of the member State supplying the information raises no objection) only to persons who are directly involved in such proceedings;
- (b) in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to or in relation to making or reviewing an income or corporation tax assessment;
- (c) not be used for other purposes in Gibraltar without the permission of the member State supplying the information; and
- (d) not be transmitted to the competent authority of another member State without the agreement of the competent authority which supplied the information.

(7) In section 4A and in this section,

“another member State” means a member State other than the United Kingdom;

“competent authority” has the same meaning as in the Directive;

“information” means information that may enable a competent authority to effect a correct assessment of taxes to which the Directive applies.”.

Income Tax (Amendment) (No.2) Ordinance, 1997 [No.26 of 1997]

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

D. J. REYES,

Clerk to the Assembly

