

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4225 of 17th December, 2015

LEGAL NOTICE NO. 229 OF 2015.

INTERPRETATION AND GENERAL CLAUSES ACT

INCOME TAX ACT 2010 (AMENDMENT) REGULATIONS 2015

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act and for the purpose of transposing into the law of Gibraltar Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, and Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, the Government has made the following Regulations—

Title.

1. These Regulations may be cited as the Income Tax Act 2010 (Amendment) Regulations 2015.

Commencement.

2. These Regulations come into operation on 31 December 2015.

Amendment of Income Tax Act 2010.

3.(1) Schedule 5 to the Income Tax Act 2010 (in these Regulations referred to as “the Act”) is amended in accordance with the provisions in this regulation.

(2) In paragraph 3 for “A parent company” substitute “Subject to paragraphs 4 and 5, a parent company”.

(3) After paragraph 3 insert the following paragraphs-

“4. The Commissioner shall-

- (a) refrain from taxing such profits to the extent that such profits are not deductible by the subsidiary; and
- (b) tax such profits to the extent that such profits are deductible by the subsidiary.

5.(1) The benefits conferred by the Directive must not be applied where an arrangement or a series of arrangements which have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the Directive, are not genuine having regard to all the relevant facts and circumstances, and for the purposes of this paragraph an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put in place for valid commercial reasons which reflect economic reality, in the opinion of the Commissioner.

- (2) For the purposes of subparagraph (1), the Commissioner may apply the provisions of—
 - (a) section 40 of the Act;
 - (b) Schedule 4 of the Act.”.

Dated 17th December, 2015.

F R PICARDO,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose-

- (a) Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, and

- (b) Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.