

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4656 GIBRALTAR Thursday 30th January 2020

LEGAL NOTICE NO 56 OF 2020.

INTERPRETATION AND GENERAL CLAUSES ACT

INCOME TAX (AMENDMENT No. 3) REGULATIONS 2020

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar, Article 5 of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, the Government has made the following Regulations—

Title.

1. These Regulations may be cited as the Income Tax (Amendment No. 3) Regulations 2020.

Commencement.

2.(1) These Regulations come into operation on 1 January 2020.

(2) The amendments made by these Regulations apply in relation to accounting periods commencing on or after 1 January 2020.

Scope.

3. These Regulations amend the Income Tax Act 2010 for the purpose of giving effect in the law of Gibraltar to Article 5 of Council Directive (EU) 2016/1164 of 12 July 2016, which provides for the imposition of an exit tax for anti-avoidance purposes.

Amendment of Income Tax Act 2010.

4. Schedule 4 to the Income Tax Act 2010 (Anti Avoidance) is amended as follows.

5. In paragraph 8A (interpretation of Parts V to VII)—

(a) the word “and” after the definition of “taxpayer” is omitted; and

(b) after the definition of “tax period” insert—

“transfer of assets” means an operation whereby a Member State loses the right to tax the transferred assets, whilst the assets remain under the legal or economic ownership of the same taxpayer;

“transfer of tax residence” means an operation whereby a taxpayer ceases to be resident for tax purposes in a Member State, whilst acquiring tax residence in another Member State or third country; and

“transfer of a business carried on by a permanent establishment” means an operation whereby a taxpayer ceases to have taxable presence in a Member State whilst acquiring such presence in another Member State or third country without becoming resident for tax purposes in that Member State or third country.”.

6. After paragraph 18 (interest limitation rule) insert—

“PART VA

EXIT TAXATION

18A.(1) This paragraph applies in any of the following circumstances—

- (a) a taxpayer transfers assets from its head office to its permanent establishment in a Member State outside Gibraltar or in a third country in so far as Gibraltar, as the Member State of the head office, no longer has the right to tax the transferred assets due to the transfer;
- (b) a taxpayer transfers assets from its permanent establishment in Gibraltar to its head office or another permanent establishment in a Member State outside Gibraltar or in a third country in so far as Gibraltar as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer;
- (c) a taxpayer transfers its tax residence to a Member State outside Gibraltar or to a third country, except for those assets which remain effectively connected with a permanent establishment in Gibraltar;
- (d) a taxpayer transfers the business carried on by its permanent establishment from Gibraltar to a Member State outside Gibraltar or to a third country in so far as Gibraltar, as the Member State of the permanent establishment, no longer has the right to tax the transferred assets due to the transfer.

(2) The taxpayer shall be chargeable to tax, at the rates set in accordance with section 24 of this Act, at an amount equal to the market value of the transferred assets which would otherwise produce assessable income under the provisions of this Act at the time of exit of the assets, less their value for tax purposes.

(3) A taxpayer may defer the payment of an exit tax referred to in subparagraph (2), by paying it in instalments over five years, in any of the following circumstances—

- (a) where a taxpayer transfers assets from its head office to its permanent establishment in a Member State outside Gibraltar or in a third country that is party to the Agreement on the European Economic Area (EEA Agreement);
- (b) where a taxpayer transfers assets from its permanent establishment in Gibraltar to its head office or another permanent establishment in a Member State outside Gibraltar or a third country that is party to the EEA Agreement;
- (c) where a taxpayer transfers its tax residence to a Member State outside Gibraltar or to a third country that is party to the EEA Agreement;
- (d) a taxpayer transfers the business carried on by its permanent establishment to a Member State outside Gibraltar or a third country that is party to the EEA Agreement.

(4) Subparagraph (3) shall apply to third countries that are party to the EEA Agreement if they have concluded an agreement with the Member State of the taxpayer or with the Union on the mutual assistance for the recovery of tax claims, equivalent to the mutual assistance provided for in Council Directive 2010/24/EU.

(5) If a taxpayer defers payment in accordance with subparagraph (3), and there is a demonstrable and actual risk of non-recovery, taxpayers may also be required by the Commissioner to provide a guarantee as a condition for deferring the payment in accordance with subparagraph (3).

(6) Where subparagraph (3) applies, the deferral of payment shall be immediately discontinued and the tax debt becomes recoverable in the following cases—

- (a) where the transferred assets or the business carried on by the permanent establishment of the taxpayer are sold or otherwise disposed of;
- (b) where the transferred assets are subsequently transferred to a third country;
- (c) where the taxpayer's tax residence or the business carried on by its permanent establishment is subsequently transferred to a third country;
- (d) where the taxpayer goes bankrupt or becomes insolvent or is wound up;
- (e) where the taxpayer fails to honour its obligations in relation to the instalments and does not correct its situation over a reasonable period of time, which shall not exceed 12 months.

(7) Subparagraph (6)(b) and (c) shall not apply to third countries that are party to the EEA Agreement if they have concluded an agreement with the Member State of the taxpayer or with the Union on the mutual assistance for the recovery of tax claims, equivalent to the mutual assistance provided for in Directive 2010/24/EU.

(8) Where a transfer of assets, tax residence or the business carried on by a permanent establishment is from a member state outside Gibraltar to Gibraltar, Gibraltar shall accept the value established by the Member State of the taxpayer or of the permanent establishment as the starting value of the assets for tax purposes (in accordance with paragraph 18A(2)), unless this does not reflect the market value.

(9) For the purposes of this paragraph, “market value” is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

(10) Provided that the assets are set to revert to the Member State of the transferor within a period of 12 months, this paragraph shall not apply to asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management.

Dated: 30th January 2020.

F R PICARDO,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Income Tax Act 2010 for the purpose of implementing Article 5 of Council Directive (EU) 2016/1164 of 12 July 2016, which provides for the imposition of an exit tax for anti-avoidance purposes.