

Subsidiary Legislation made under s.3A(2).

**Income Tax Act 2010 International Agreement (Spain)
Notice 2021**

LN.2021/157

Commencement **26.2.2021**

In accordance with the provisions of section 3A(2) of the Income Tax Act 2010, I have issued the following Notice.

Title.

1. This Notice may be cited as the Income Tax Act 2010 International Agreement (Spain) Notice 2021.

Text of Agreement.

2. Pursuant to section 3A(2) of the Income Tax Act 2010 the text of an International Tax Agreement, dated 4 March 2019, is hereby reproduced—

INTERNATIONAL AGREEMENT ON TAXATION AND THE PROTECTION OF FINANCIAL INTERESTS BETWEEN THE KINGDOM OF SPAIN AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND REGARDING GIBRALTAR

CONSIDERING that, for the purposes of this Agreement, the United Kingdom acts as the State responsible for Gibraltar's external relations,

NOTING that the present Agreement, or any activity or measure taken in application or as a result thereof, do not imply any modification of the respective legal positions of the Kingdom of Spain or of the United Kingdom with regard to sovereignty and jurisdiction in relation to Gibraltar,

The parties, determined to improve co-operation in the field of taxation, and the protection of financial interests have agreed on the following:

Article 1. Protection of financial interests and tax good governance.

- (1) All the legislation and standards of the European Union as regards transparency, administrative cooperation, harmful tax practices and anti-money laundering shall continue to be applied in Gibraltar until the date on which EU law ceases to apply in Gibraltar.
- (2) From the date on which EU law ceases to apply in Gibraltar, legislation equivalent to EU legislation which exists on that date shall be maintained in Gibraltar.

Article 2. Tax residency of natural and legal persons, entities and other legal structures or arrangements.***Natural persons***

- (1) For the purposes of this Agreement, the Parties agree that:
 - (a) Natural persons shall be tax resident in Spain or in Gibraltar in accordance with their domestic law, including rules regarding the issuance of tax certificates confirming residency and subject to the following rules only in cases of tax residency conflicts;
 - (b) Where by reason of the provisions in paragraph (1)(a) natural persons are resident of both Parties then their status shall be determined as follows:
 - (i) Natural persons shall be tax resident only in Spain when any of the following circumstances exist:

- A. They spend over 183 overnight stays of the calendar year in Spain. In determining the count of overnight stays, sporadic absences in neither Spain nor Gibraltar shall be added to the time where these individuals spend the majority of their overnight stays;
- B. In the event that, pursuant to the Spanish tax legislation, their spouse (from whom they are not legally separated) or the natural person with whom a similar relationship has been established, and/or any dependent ascendants or descendants, resides or reside habitually in Spain;
- C. The only permanent home at their disposal is in Spain; or
- D. Two thirds of their net assets, determined pursuant to Spanish Tax legislation, whether held directly or indirectly, are located in Spain;
- (ii) When the provisions of paragraph (1)(b)(i) are not conclusive, natural persons shall be considered tax residents only in Spain, unless they are able to provide reliable evidence that they have a permanent home for their exclusive use in Gibraltar and remain in Gibraltar over 183 days;
- (iii) The Joint Coordination Committee provided for in Article 5 of this Agreement shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this paragraph (1)(b), where all the authorities forming the committee so decide;
- (c) The following special rules for determining residency shall be applied in all cases without prejudice to the criteria set forth in the preceding paragraphs:
- (i) Spanish nationals who move their residency to Gibraltar after the date on which this Agreement is signed shall in all cases only be considered tax residents of Spain;
- (ii) Non-Spanish nationals who provide proof of their new residency in Gibraltar shall not lose tax residency in Spain. This rule shall apply in the tax period in which the change of residency is made and during the four subsequent tax years. This paragraph shall not apply to non-

Spanish nationals that spend less than one complete tax year in Spain or registered Gibraltarians that spend less than 4 years in Spain;

- (d) For the purposes of paragraph (1)(c)(ii) above, registered Gibraltarians means any natural person as defined by section 4 of the Gibraltarian Status Act, generally British citizens that have resided in Gibraltar for over ten years;
- (e) Gibraltar's special tax residency schemes for High Net Worth Individuals (HNWI), Category 2 Individuals (Cat 2), High Executive Possessing Specialist Skills (HEPSS) or any other equivalent scheme that may be created in the future, shall not of itself, constitute proof of tax residency in Gibraltar for the purposes of this Agreement.

Legal persons, entities and other legal structures or arrangements

(2) The following rules for determining tax residency apply:

- (a) Legal persons, entities and other legal structures or arrangements, established and managed in Gibraltar, or governed by its legislation, shall be considered to have residency only in Spain when any of the following circumstances exist:
 - (i) The majority of the assets, whether directly or indirectly owned, are located in Spain or consist of rights that may or must be exercised in Spain;
 - (ii) The majority of the income accrued in a calendar year derives from sources in Spain, pursuant to article 13 of the codifying legislation of the Non-resident Income Tax Act of the Spanish tax legislation as may be amended from time to time;
 - (iii) The majority of the natural persons in charge of effective management are tax resident in Spain;
 - (iv) The majority of the interests in the capital or equity, voting or profit-sharing rights are under the direct or indirect control of either natural persons who are tax residents in Spain or legal persons, entities and other legal structures or arrangements linked to tax residents in Spain;
- (b) Paragraphs (iii) and (iv) of paragraph (2)(a) above shall not apply to any legal person, entity and other legal structure or arrangement that is

incorporated in Gibraltar before 16 November 2018, and that at 31 December 2018 when conditions in paragraph (2)(a)(iii) or (2)(a)(iv) are met, satisfies all of the following:

- (i) has a fixed place of business through which the business is wholly or partly carried on in Gibraltar with an adequate number of employees, with the necessary qualifications and an adequate amount of operating expenditure with regards the core income generating activities;
 - (ii) is effectively subject to and pays Corporation Tax in Gibraltar on its profits at the prevailing rate in accordance with Gibraltarian tax legislation (presently 10% or 20%);
 - (iii) has for the period between the date of its incorporation and the 31 December 2018, operated in or from Gibraltar and has done so without interruption or a change in its trade since 1st January 2011;
 - (iv) has more than 75% of its income in respect of the financial year immediately preceding the 31 December 2018, accruing in and deriving from sources in Gibraltar in accordance with Gibraltarian tax legislation as may be amended from time to time; and
 - (v) has less than the following incomes in respect of the financial year immediately preceding the 31 December 2018 from sources in Spain in accordance with Article 13 of the codifying legislation of the Non-resident Income Tax Act of the Spanish tax legislation as may be amended from time to time:
 - A. 5% for a legal person, entity and other legal structure or arrangement whose annual turnover exceeds 6 million euros;
 - B. 10% for a legal person, entity and other legal structure or arrangement whose annual turnover exceeds 3 million euros but does not exceed 6 million euros;
 - C. 15% for a legal person, entity and other legal structure or arrangement whose annual turnover does not exceed 3 million euros;
- (c) When considering annual turnover in paragraph (2)(b)(v), turnover shall be taken to include that of the legal person, entity, other legal structure, or arrangement, together with the turnover of any related party incorporated

in Gibraltar, where related party is defined in accordance with International Accounting Standard (IAS) 24 on Related Party Disclosures;

- (d) In applying paragraph (2)(b), the Gibraltar tax authorities, designated pursuant to Article 4 of this Agreement, shall provide the Spanish tax authorities with the list of the legal persons, entities and other legal structures or arrangements which meet the conditions of paragraphs (2)(a)(iii) or (2)(a)(iv) and also meet conditions in paragraphs (2)(b)(i) to (2)(b)(v) above at 31 December 2018. This list shall include details on the legal and beneficial ownership and the natural persons in charge of effective management of those legal persons, entities and other legal structures or arrangements and shall be provided by the Gibraltar tax authorities by 31 March 2020;
- (e) Spanish legal persons, entities, other legal structures or arrangements whose residency is moved to Gibraltar after the date of entry into force of this Agreement shall in all cases maintain tax residency only in Spain.

Elimination of double taxation

- (3) The competent authorities shall eliminate, where relevant, double taxation pursuant to the provisions of their domestic law.

Article 3. Administrative cooperation in tax matters

- (1) The Parties shall apply an enhanced administrative cooperation with each other with a view to exchanging information that is foreseeably relevant to the administration, enforcement and collection concerning taxes of all kind and description imposed on behalf of the Parties, their territorial or administrative subdivisions, including local entities.
- (2) From the date on which EU law ceases to apply in Gibraltar, the Parties shall apply with regard to each other measures that have equivalent effect to the principles and all of the modalities of Union legislation regarding mutual administrative assistance in force at any given time in the European Union. In particular the information and mechanisms provided by the Council Directive 2011/16 EU of 15 February 2011 on Administrative Cooperation in the field of taxation and repealing Directive 77/799 EC and its subsequent amendments (Directive 2014/107/EU of 9 December 2014, Directive 2015/2376/EU of 8 December 2015, Directive 2016/881/EU of 25 May 2016 and Directive 2018/822/EU of 25 May 2018), Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. Furthermore, the mechanisms set forth in the broadest terms

in the OECD and Council of Europe's Multilateral Convention on Mutual Administrative Assistance in Tax Matters shall be applied, as too shall any OECD and G20 standards introduced in this sphere in the future.

- (3) The liaison bodies designated pursuant to Article 4 shall provide mutual administrative assistance to each other in tax matters under this Agreement, whether the person affected is a resident or a non-resident of either Party. The following forms of co-operation shall be available in all cases:
- (a) The exchange of information, whether automatic, spontaneous or upon request, including simultaneous tax examinations or joint controls and participation in tax examinations abroad;
 - (b) Assistance with collection, including measures of conservancy, in accordance with their respective domestic laws; and
 - (c) The serving or transfer of documents.
- (4) The liaison bodies further agree to automatically exchange information on the categories of information specified in paragraphs (5)(a) to (5)(b) and (10)(a) to (10)(b).
- (5) The Gibraltar tax authorities, designated pursuant to Article 4 of this Agreement, shall provide the Spanish tax authorities similarly designated, with the following:
- (a) Annual information on workers registered in Gibraltar as residents in Spain, fully identifying every aspect of the underlying employment relationship or any trade, business, profession or vocation carried on or exercised by these workers, including details of duration, economic terms and employer;
 - (b) Six-monthly information on vessels, aircraft and motor vehicles registered in Gibraltar relating to tax residents in Spain;
 - (c) The direct and free access to the records of the Registrar of Companies in Gibraltar, provided for in the Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, which amended Directives 2009/138/EC and 2013/36/EU, as well as to the Gibraltar Land Registry;

- (d) Direct access to beneficial ownership information as is public or, on request to the Commissioner of Income Tax in Gibraltar on companies, any body corporate, partnerships and foundations;
 - (e) Direct access to information as is public or otherwise available to the Commissioner of Income Tax in Gibraltar on the settlors, trustees, beneficiaries, assets of all types of trusts, as well as to other legal structures or arrangements established or managed in Gibraltar, or governed by its legislation, when the settlors, trustees, protectors, beneficiaries, are tax resident in Spain or the assets held by all types of trusts are located in Spain.
- (6) For the purposes of paragraph (5)(a) above, information is to be exchanged within four months after the end of the calendar year in which the taxable period ends.
- (7) The first exchange of information in respect of paragraph (5)(a) above, shall be in respect of taxable periods commencing on or after 1 January 2014 until the date of entry into force of this Agreement and shall be exchanged within four months of the date of entry into force of this Agreement.
- (8) For the purposes of paragraph (5)(b) above, information is to be exchanged every six months, on 31 March and 30 September commencing on or after the date of the first exchange under this Agreement. The information exchanged on 31 March shall relate to the period 1 July to 31 December of the previous calendar year, and the information exchanged on 30 September shall relate to the period 1 January to 30 June of that same calendar year. The exchanges made shall ensure continuity of information provided such that no period is omitted between the first exchange of information after the date of entry into force of this Agreement and subsequent ongoing exchanges. These information exchanges shall only include details of new registrations of vessels, aircraft and motor vehicles.
- (9) The first exchange of information in respect of paragraph (5)(b) above shall be in respect of taxable periods as they correspond to calendar years commencing on or after 1 January 2014 until the date of entry into force of this Agreement and shall be exchanged within four months of the date of entry into force of this Agreement. This information shall include the ownership, licence plate number, value and acquisition date regarding vessels, aircraft and motor vehicles registered in Gibraltar.

- (10) The Spanish tax authorities, designated pursuant to Article 4 of this Agreement, shall provide the Gibraltarian tax authorities, similarly designated, with the following:
- (a) Annual information on workers registered in Spain as resident in Gibraltar, fully identifying economic aspect of the underlying employment relationship or any trade, business, profession or vocation carried on or exercised by these workers, including details of duration, economic terms, annual and exempt income and employer;
 - (b) Six-monthly information on vessels, aircraft and motor vehicles newly registered in Spain relating to tax residents in Gibraltar.
- (11) For the purposes of paragraph (10)(a) above, information is to be exchanged within four months after the end of the calendar year to which the information relates.
- (12) The first exchange of information in respect of paragraph (10)(a) above, shall be in respect of taxable periods commencing on or after 1 January 2014 until the date of entry into force of this Agreement and shall be exchanged within four months of the date of entry into force of this Agreement.
- (13) For the purposes of paragraph (10)(b) above, information is to be exchanged every six months, on 31 March and 30 September. The information exchanged on 31 March shall relate to the period 1 July to 31 December of the previous calendar year, and the information exchanged on 30 September shall relate to the period 1 January to 30 June of the same calendar year. The exchanges made shall ensure continuity of information provided such that no period is omitted between the first exchange of information after the date of entry into force of this Agreement and subsequent ongoing exchanges. These information exchanges shall only include details of new registrations of vessels, aircraft and motor vehicles.
- (14) The first exchange of information in respect of paragraph (10)(b) above shall be in respect of taxable periods as they correspond to calendar years commencing on or after 1 January 2014 until the date of entry into force of this Agreement and shall be exchanged within four months of the date of entry into force of this Agreement. This information shall include the ownership, license plate number, value and acquisition date regarding vessels, aircraft and motor vehicles registered in Gibraltar.
- (15) For the purposes of Article 3 of this Agreement:

- (a) 'Person' means:
 - (i) A natural person; and
 - (ii) A legal person, entity and other legal structure or arrangement such as a corporation, partnership, trust or foundation;
- (b) 'Workers' means:
 - (i) In the case of the information to be exchanged by Gibraltar, natural persons that are employed and/or carry on a trade, business, profession, or vocation in Gibraltar and reside in Spain in municipalities situated within a radius of 80 km from Gibraltar;
 - (ii) In the case of information to be exchanged by Spain, natural persons resident in Gibraltar that are employed and/or carry on a trade, business, profession, or vocation in Spain in municipalities situated within a radius of 80 km from Gibraltar.

Article 4. Liaison bodies

The Parties shall respectively designate the liaison bodies with competence to directly undertake the cooperation actions set forth in this Agreement. Each Party shall inform each other of the liaison bodies designated, within one month of the entry into force of this Agreement.

Article 5. Joint Coordination Committee

- (1) The Parties shall create a Joint Coordination Committee formed by the Authorities designated by the Parties, which shall supervise and coordinate the cooperation activities set out in this Agreement.
- (2) Additionally, the aforementioned Joint Coordination Committee shall endeavour to resolve by mutual agreement, any difficulties or doubts arising as to the interpretation or application of this Agreement, in particular regarding Article 2, in those specific cases where all the authorities forming the Joint Coordination Committee so decide.

Article 6. Information exchange, Confidentiality and Data Safeguards

Information exchanged under this Agreement is subject to the rules provided in Articles 21 and 22 of the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the Council of Europe.

Article 7. Duration and termination

This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such an event, the Agreement shall cease to have effect in respect of taxes chargeable for any tax year commencing on or after 1 January in the calendar year next following the year in which the notice is given.

Article 8. Entry into force

- (1) This Agreement shall enter into force on the date of the later of the Parties' notifications that they have completed their internal procedures, and shall have effect for the provisions of paragraphs (1) and (2) of Article 2 for:
 - (a) taxable periods commencing on or after the date of entry into force of this Agreement; or
 - (b) in cases where there are no such taxable periods, all charges arising on or after the date of entry into force of this Agreement.
- (2) The provisions of Article 3 shall have effect after the date of entry into force of this Agreement as follows:
 - (a) for taxable periods commencing on or after 1 January 2014 in respect of the automatic exchange of information under paragraphs (5)(a) to (5)(b) and (10)(a) to (10)(b) of that Article; and
 - (b) in respect of any other exchange of information not addressed in paragraph (2)(a) above, for taxable periods commencing on or after 1 January 2011 or where there is no taxable periods, for all charges to tax arising on or after 1 January 2011.
- (3) The remainder of the provisions of this Agreement shall have effect from the date of entry into force.

Article 9. Territorial extent

2010-21

Income Tax

**2021/157 Income Tax Act 2010 International Agreement (Spain)
Notice 2021**

With respect to the United Kingdom, this Agreement applies only to the territory of Gibraltar.

DONE in duplicate in London on 4 March 2019 and Madrid on 4 March 2019 in the English and Spanish languages, both texts being equally authoritative.

For the Kingdom of Spain

For the United Kingdom

H.E. Josep Borrell Fontelles
Minister of Foreign Affairs,
European Union and
Cooperation

The Rt Hon David Lidington
Minister for the Cabinet
Office and Chancellor of the
Duchy of Lancaster