

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5194 GIBRALTAR Tuesday 10th December 2024

B. 34/24

BILL

FOR

AN ACT to impose a Global Minimum Tax including a Qualifying Domestic Minimum Top-Up Tax compliant with the Organisation for Economic Co-Operation and Development (OECD) objectives by direct reference to their Global Anti-Base Erosion Model Rules and Commentary and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Global Minimum Tax Act 2024.

Commencement and Application.

2.(1) This Act is deemed to have come into operation on 31 December 2023.

(2) Subject to subsection (3), this Act applies to Fiscal Years beginning on or after 31 December 2023.

(3) Part 3 of this Act applies to Fiscal Years beginning on or after 31 December 2024.

PART 1

INTERPRETATION & INCORPORATION OF THE GLOBAL ANTI-BASE EROSION MODEL RULES AND COMMENTARY

Interpretation.

3.(1) In this Act –

“Administrative Guidance” means administrative guidance on the Global Anti-Base Erosion Model rules released by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) including-

- (a) OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris;
- (b) OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), July 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;
- (c) OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;
- (d) OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024, OECD/G20 Inclusive Framework on BEPS, OECD, Paris; and
- (e) any similar document subsequently released by the OECD/G20 Inclusive Framework on BEPS;

“Commissioner” has the meaning given in the Income Tax Act 2010;

“Domestic Constituent Entity” means a Constituent Entity that is located in Gibraltar;

“Domestic Joint Venture” means a Joint Venture within the meaning of the Model Rules that is located in Gibraltar;

“Domestic JV Group” means-

- (i) a Domestic Joint Venture;
- (ii) a Domestic Joint Venture and its Domestic JV Subsidiaries; or
- (iii) the Domestic JV Subsidiary or Domestic JV Subsidiaries of a Joint Venture that is not located in Gibraltar;

“Domestic JV Subsidiary” means a JV Subsidiary within the meaning of the Model Rules that is located in Gibraltar;

“GloBE Information Return” means the return referred to in the document OECD (2023) Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris;

“G20” means (The Group of 20), the premier intergovernmental forum for global economic co-operation;

“Minister” means the Minister responsible for Taxation;

“Model Rules” means the model rules published by the OECD in December 2021 as OECD (2021) Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS,–OECD Publishing, Paris or any similar document subsequently released by the OECD/G20 Inclusive Framework on BEPS amending the Model Rules from time to time;

“OECD” means the Organisation for Economic Co-Operation and Development;

“OECD Commentary” means-

- (i) OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris; and
- (ii) any similar document subsequently released by the OECD;

“Safe Harbours” means an exception provided in Article 8.2.1 of the Model Rules whose design and eligibility conditions have been approved by the Inclusive Framework and set out in:

- (a) OECD (2022), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris;
- (b) Administrative Guidance; and
- (c) any similar document subsequently released by the OECD/G20 Inclusive Framework on BEPS;

“Tribunal” means the Income Tax Tribunal constituted, appointed and acting in accordance with the provisions of Schedule 2 of the Income Tax Act 2010;

“Wholly Domestic Group” means a Group where the Ultimate Parent Entity and all Constituent Entities are located within Gibraltar and that has annual revenue of EUR 750 million or more in the Consolidated Financial Statements of the Ultimate Parent Entity (UPE) in at least two of the four Fiscal Years immediately preceding the tested Fiscal Year.

(2) References in this Act to an Article are references to the corresponding Article in the Model Rules.

(3) Terms used in this Act that are defined in the Model Rules have the meaning given in the Model Rules, unless that meaning is modified by this Act.

(4) For the purposes of this Act, the location of an entity is to be determined in accordance with Article 10.3.

Effect and interpretation of the Model Rules.

4.(1) The Model Rules have effect in Gibraltar.

(2) For the purposes of interpreting the terms defined in the Model Rules, the Commissioner shall have regard to the OECD Commentary including the Safe Harbours.

Implementing jurisdiction.

5. References in the Model Rules to an implementing jurisdiction are deemed to be references to Gibraltar.

Amendments to the OECD Commentary.

6.(1) Amendments made to the OECD Commentary, including through Administrative Guidance, shall apply to the interpretation of this Act for Fiscal Years beginning after the date the amendment is approved by the OECD/G20 Inclusive Framework on BEPS or such other date as specified by the Minister by Notice, except where specifically made inapplicable by the Minister by Notice.

(2) In subsection (1), “Notice” means a legal notice published in the Gazette.

Applicability of elections made in the GloBE Information Return.

7. Elections made in the GloBE Information Return that affect the calculation of the Top-up Tax under the Model Rules shall have the same effect for the purposes of this Act.

Top-Up Tax liability in domestic currency.

8. If the Top-up Tax computed in accordance with this Act is in a foreign currency, it shall be converted into an equivalent sum in sterling using the average exchange rate for the Fiscal Year to which the Top-up Tax relates.

PART 2

GENERAL

Application of provisions of the Income Tax Act 2010.

9. Sections 2, 3 and 10 of the Income Tax Act 2010 which relate to administration, confidentiality and the service of notices shall apply to administration, confidentiality and the service of notices under this Act as they apply to administration, confidentiality and the service of notices under that Act.

Power to make rules.

10.(1) The Minister, on the recommendation of the Minister with responsibility for finance, may from time to time make rules generally for carrying out the provisions of this Act.

(2) The Commissioner may from time to time specify the form of returns and notices required under this Act.

(3) The Minister or, with his approval, the Commissioner, may from time to time issue guidance consisting of such information and advice as he considers appropriate with respect to the operation of this Act and any legislation subsidiary to this Act.

Minimum Rate.

11. The Minimum Rate for the purposes of the computation of Top-up Tax in Parts 3 and 4 of this Act shall be fifteen percent.

PART 3

INCOME INCLUSION RULE

Charge to Tax for Constituent Entities.

12. An Ultimate Parent Entity, Intermediate Parent Entity or Partially Owned Parent Entity is liable to pay a Top-up Tax under the Income Inclusion Rule determined in line with the Model Rules for each Fiscal Year of the MNE Group that includes the Ultimate Parent Entity, Intermediate Parent Entity or Partially Owned Parent Entity.

Inapplicable articles in the Model Rules.

13. The following provisions of the Model Rules do not apply for the purposes of this Part:

- (a) Articles 2.4 to 2.6 (UTPR charging provisions); and
- (b) Article 9.3 (exclusion from the UTPR of MNE Groups in the initial phase of their international activity).

PART 4

DOMESTIC TOP-UP TAX

Chapter 1

Constituent Entity Liability

Charge to Tax for Domestic Constituent Entities.

14. This Part does not apply to Investment Entities and Insurance Investment Entities.
15. A Wholly Domestic Group is treated as an MNE Group for the purposes of Part 4.
16. Each Domestic Constituent Entity is jointly liable to pay a domestic minimum top-up tax for each Fiscal Year of the MNE Group that includes the Domestic Constituent Entity. The domestic minimum top-up tax for the Fiscal Year shall be equal to the Top- up Tax determined under this Part.

Charge to Tax for Domestic Joint Ventures.

17. Each Domestic Joint Venture and/or Domestic JV Subsidiary of a Domestic JV Group is jointly liable to pay a domestic minimum top-up tax for each Fiscal Year of the MNE Group that includes the Domestic Joint Venture and/or Domestic JV Subsidiary. The domestic minimum top-up tax for the Fiscal Year shall be equal to the Top-up Tax determined under this Part.

Calculation of the Top-up Tax.

18. The Top-up Tax of Domestic Constituent Entities of the MNE Group and Top-up Tax of a Domestic JV Group shall be determined under the Model Rules, as modified by Chapters 2 through 4 of this Part.

Chapter 2

Articles of the Model Rules that do not apply

Inapplicable articles in the Model Rules.

19. The following provisions of the Model Rules shall not apply for the purposes of this Part:
 - (a) Chapter 2 (charging provisions);
 - (b) Article 5.2.3 (Jurisdictional Top-up Tax formula);

- (c) Article 5.2.4 (allocation of Top-up Tax amongst Constituent Entities);
- (d) Article 5.2.5 (allocation of Top-up Tax amongst Constituent Entities when no Net GloBE Income for Fiscal Year);
- (e) Article 5.4.2 (allocation of Additional Current Top-Up Tax in connection with Article 5.4.1);
- (f) Article 5.4.3 (allocation of Additional Current Top-Up Tax in connection with Article 4.1.5);
- (g) Article 5.4.4 (determination as Low-Taxed Constituent Entity);
- (h) Article 6.2.1(h) (application of IIR in respect of acquisition of a target entity);
- (i) Article 6.4.1(b) and (c) (application of IIR and UTPR in connection with Joint Venture and JV Subsidiaries);
- (j) Article 6.5.1(e) and (f) (application of IIR and UTPR in connection with Multi-Parented MNE Groups);
- (k) Article 7.3 (Eligible Distribution Tax System); and
- (l) Article 9.3 (Exclusion from the UTPR of MNE Groups in the initial phase of their international activity).

Inapplicable safe harbours.

20. The QDMTT Safe Harbour shall not apply for the purposes of this Part.

Chapter 3

Computation of Adjusted Covered Taxes

Exclusion of certain foreign taxes on domestic income.

21. Notwithstanding Article 4.3.2, the Adjusted Covered Taxes of a Domestic Constituent Entity and member of a Domestic JV Group shall not include any foreign tax accrued by a Constituent Entity-owner or Main Entity located in another jurisdiction with respect to the GloBE Income of such Domestic Constituent Entity, and member of a Domestic JV Group.

Exclusion of domestic taxes on certain foreign income.

22. The Adjusted Covered Taxes of a Domestic Constituent Entity and member of a Domestic JV Group that is a Constituent Entity-owner or a Main Entity shall exclude any Covered Tax accrued by such Entity that is allocable to a Constituent Entity located in another jurisdiction under Article 4.3.2 (after taking into account Article 4.3.3).

Chapter 4

Computation of top-up tax

Total Top-up Tax of Domestic Constituent Entities of the MNE Group.

23. The Top-up Tax of Domestic Constituent Entities of the MNE Group shall be equal to the sum of the Jurisdictional Top-up Tax calculated in accordance with section 25 but shall not include Jurisdictional Top-up Tax calculated for Domestic Joint Ventures or Domestic JV Subsidiaries.

Top-up Tax of a Domestic JV Group.

24. The Top-up Tax of a Domestic JV Group shall be equal to the Jurisdictional Top-up Tax calculated for that Domestic JV Group.

Jurisdictional Top-up Tax.

25. There shall be separate Jurisdictional Top-up Tax computations for Domestic Constituent Entities that are Minority-Owned Constituent Entities, Domestic JV Groups and other Domestic Constituent Entities. The Jurisdictional Top up Tax shall be computed using the following formula in lieu of the formula set out in Article 5.2.3:

Top-up Tax = (Top-up Tax Percentage x Excess Profits) + Additional Current Top-up Tax

PART 5

INFORMATION RETURN AND PAYMENT

Obligation to file GloBE Information Return under Part 3.

26.(1) For the purposes of Part 3 an Ultimate Parent Entity, shall be required to file a GloBE Information Return with the Commissioner on or before the last day of the 15th month following the end of the Fiscal Year, except that the GloBE Information Return shall be required to be filed on or before the last day of the 18th month following the end of the Fiscal Year if it is the first Fiscal Year that the MNE Group is subject to this Act and the MNE Group has not been required to file a GloBE Information Return in another jurisdiction for a previous Fiscal Year.

(2) An Ultimate Parent Entity or a Designated Filing Entity must file the GloBE Information Return on behalf of the MNE Group.

(3) The GloBE Information Return filed shall be accompanied by such information or documentation as is specified in the form or any notes accompanying the form made available by the Commissioner.

Obligation to file GloBE Information Return under Part 4.

27.(1) Except as otherwise provided for in this section, for the purposes of Part 4, a Domestic Constituent Entity, Domestic Joint Venture and/or Domestic JV Subsidiary, shall file a GloBE Information Return with the Commissioner on or before the last day of the 15th month following the end of the Fiscal Year, except that the GloBE Information Return shall be filed on or before the last day of the 18th month following the end of the Fiscal Year if it is the first Fiscal Year that the MNE Group is subject to this Act and the MNE Group has not been required to file a GloBE Information Return in another jurisdiction for a previous Fiscal Year.

(2) A Designated Local Entity must be appointed to file the GloBE Information Return on behalf of all Domestic Constituent Entities, Domestic Joint Ventures and Domestic JV Subsidiaries.

(3) The GloBE Information Return filed under subsection (2) above shall be accompanied by such information or documentation as is specified in the form or any notes accompanying the form made available by the Commissioner.

Exception for returns provided under an automatic exchange of information agreement.

28.(1) For the purposes of Part 3-

- (a) An Ultimate Parent Entity-is not obligated to file a GloBE Information Return with the Commissioner if a GloBE Information Return has been filed in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with Gibraltar for the Reporting Fiscal Year.
- (b) In relation to a Reporting Fiscal Year, an Ultimate Parent Entity or Designated Local Entity must notify the Commissioner that the GloBE Information Return has or will be filed in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with Gibraltar.

(2) For the purposes of Part 4-

- (a) A Designated Local Entity, Domestic Constituent Entity, a Domestic Joint Venture and a Domestic JV Subsidiary are not obligated to file a GloBE Information Return with the Commissioner if a GloBE Information Return has been filed in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with Gibraltar for the Reporting Fiscal Year.
- (b) In relation to a Reporting Fiscal Year, a Designated Local Entity, Domestic Constituent Entity, the Domestic Joint Venture or Domestic JV Subsidiary must notify the Commissioner that the GloBE Information Return has or will be filed in

a jurisdiction that has a Qualifying Competent Authority Agreement in effect with Gibraltar.

(3) A notification under section 28(1)(b) or section 28(2)(b) shall be filed with the Commissioner no later than three months prior to the filing due date of the GloBE Information Return in such form and manner, including by electronic means, as may be specified by the Commissioner from time to time.

(4) A notification filed under section 28(1)(b) or section 28(2)(b) shall be accompanied by such information or documentation as is specified in the form or any notes accompanying the form made available by the Commissioner.

Due date for payment.

29.(1) The Top-up Tax due under section 12 and/or Chapter 4 of Part 4, as may be applicable, shall be paid on or before the due date for filing the GloBE Information Return.

(2) For the purpose of Part 3, the Parent Entity shall pay the Top-up Tax on behalf of the MNE Group. If more than one Parent Entity has a Top-up Tax liability in accordance with section 12, they shall be jointly liable to pay the Top-up Tax on behalf of the MNE Group.

(3) For the purpose of Part 4, the Designated Local Entity shall pay the Top-up Tax on behalf of all Domestic Constituent Entities, Domestic Joint Ventures, and Domestic JV Subsidiaries.

(4) If a Domestic Constituent Entity, Domestic Joint Venture or Domestic JV Subsidiary does not comply with any provision for the purposes of the computation or payment of the Top-up Tax under Parts 3 or 4, as may be applicable, the Commissioner may estimate the Top-up Tax due and assess one or more Domestic Constituent Entity, Domestic Joint Venture or Domestic JV Subsidiary for all or part of the Top-up Tax liability in accordance with the provisions of Part 7 of this Act.

PART 6

RECORD KEEPING REQUIREMENTS

Duty to keep and preserve records

30.(1) A person required to file a GloBE Information Return or notification under this Act for any Fiscal Year must:

- (a) keep such records as may be needed to enable it to file a GloBE Information Return or notification for the Fiscal Year; and
- (b) preserve those records in accordance with this section.

(2) The records must be preserved for ten years from the end of the Fiscal Year for which the person is required to deliver a GloBE Information Return or notification, as the case may be.

PART 7

ASSESSMENTS

Assessing procedure.

31.(1) Subject to the provisions of this Act, assessments to Top-up Tax shall be made by the Commissioner, and—

- (a) if the Commissioner is satisfied that any GloBE Information Return filed in accordance with sections 26 or 27, or received in accordance with section 28 affords correct and complete information concerning income in respect of which Top-up Tax is chargeable, he shall make an assessment accordingly;
- (b) if it appears to the Commissioner that there is any income in respect of which Top-up Tax is chargeable and which has not been included in a GloBE Information Return filed in accordance with sections 26 or 27, or received in accordance with section 28 of this Act, or if the Commissioner is dissatisfied with any such return, he may make an assessment to Top-up Tax to the best of his judgment.

Assessing procedure where no GloBE Information return is delivered.

32. Where a GloBE Information Return is required to be filed in accordance with sections 26 or 27 or received in accordance with section 28, and the required GloBE Information Return is not delivered on or before the date specified in sections 26 or 27, as may be applicable, or received under section 28, the Commissioner may to the best of his judgment make an assessment in relation to a Fiscal Year.

Ordinary time limit of ten years for making assessments.

33. Subject to the provisions of this Act an assessment to Top-up Tax may be made at any time not later than ten years after the end of the Fiscal Year to which the assessment relates.

Additional, amended and discovery assessments.

34.(1) If the Commissioner discovers—

- (a) that any income which ought to have been assessed to Top-up Tax has not been assessed; or
- (b) that an assessment to Top-up Tax is or has been insufficient the Commissioner may make an assessment in the amount which ought in the opinion of the Commissioner to be charged.

(2) Subject to the provisions of this section, any assessment to Top-up Tax made under this Act may be amended at any time by the Commissioner in the amount which ought in the opinion of the Commissioner to be charged.

(3) Amendments to an assessment to Top-up Tax may be made at any time not later than ten years after the end of the Fiscal Year to which the assessment relates.

Service of assessments and appeals.

35. Section 35 (*Service of assessments and appeals*) of the Income Tax Act 2010 shall apply under this Act.

Assessments to be final and conclusive.

36. Subject to section 34, except as expressly provided in this Act, where no valid appeal has been lodged within the time limit as provided in section 35 against an assessment, it shall be final and conclusive for all purposes of this Act as regards the amount of Top-up Tax assessed.

Recovery through the courts.

37. Section 69 (*Recovery of taxation through the courts*) of the Income Tax Act 2010 shall apply to the Top-up Tax charged under this Act with such modifications as circumstances may require.

PART 8

INFORMATION POWERS

Information powers.

38.(1) Where the Commissioner is dissatisfied with a GloBE Information Return he may give notice under this section to a Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary of his intention to enquire into the GloBE Information Return.

(2) The Commissioner may by notice in writing require the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary, within such time (which shall not be less than 30 days) as may be specified in the notice to produce to the Commissioner such documents as are in the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary possession or power and as the Commissioner may require for the purpose of determining whether and, if so, the extent to which the GloBE Information Return is incorrect or incomplete or the amendment is incorrect.

(3) For the purposes of complying with a notice under subsection (2) above, copies of documents (including electronic copies) may be produced instead of originals.

(4) The Commissioner may take copies of, or make extracts from, any document produced to him under subsection (2) or (3) above.

(5) An appeal may be made by a Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary to the Tribunal in respect of any requirement imposed by a notice under subsection (2) above.

(6) An appeal under subsection (5) above must be brought within the period of 30 days beginning with the date on which the notice under subsection (2) above is given and shall be made in writing addressed to the Commissioner.

(7) A notice under subsection (2) above does not oblige the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and / or Domestic JV Subsidiary to produce documents or particulars relating to the conduct of any pending appeal by that Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary.

(8) Subject to subsection (9) below, the provisions of Schedule 2, Income Tax Act 2010 shall apply to an appeal under subsection (5) above as they apply to an appeal against an assessment to tax under the Income Tax Act 2010.

(9) On an appeal under subsection (5) above, the Tribunal may—

- (a) if it appears to it that the production of the document or particulars are required by the Commissioner for the purposes mentioned in subsection (2) above, confirm the notice issued under that subsection; or
- (b) if it appears to it that the production of the document or particulars are not required by the Commissioner for the purposes mentioned in subsection (2) above, set aside the notice to such extent as it considers necessary.

(10) An enquiry under this section may be made at any time not later than five years after the date of the receipt of any GloBE Information Return required to be filed in accordance with sections 26 or 27 or received in accordance with section 28 as applicable.

Information Power Notices.

39.(1) Subject to this section, the Commissioner may by notice in writing require a Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary to deliver to him information relevant to the Top-up Tax to which the person is or may be subject to.

(2) Subject to this section, the Commissioner may, for the purpose of enquiring into the Top-up Tax of a Designated Filing Entity Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary, by notice in writing require any other person to deliver to the Commissioner, or if the Commissioner agrees, to make available for inspection within such time as may be specified in the notice, information relevant to the Top-

up Tax of the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary whose liability the Commissioner is enquiring into.

- (3) For the purposes of a notice issued under subsections (1) and (2)–
- (a) the time to be specified in the notice shall not be less than 30 days; and
 - (b) the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary whose liability the Commissioner is enquiring into shall be named.
- (4) If the Commissioner agrees, that the person to whom a notice under either subsections (1) or (2) is given may deliver extracts of the information requested in a form and manner agreed by the Commissioner.
- (5) The Commissioner retains the right to examine all or a sample of the information from which the extract delivered under subsection (4) has been extracted, provided that such right is exercised within 6 months of the date of the delivery of that extract.
- (6) The Commissioner when giving a notice under subsections (1) or (2) shall provide to–
- (a) in the case of a notice under subsection (1) above, the person to whom the notice applies; or
 - (b) in the case of a notice under subsection (2) above, the person whose liability the Commissioner is enquiring into,

a written summary of the reasons for the notice to the extent that such summary does not identify any person who has provided the Commissioner with information which he took into account in deciding to issue the notice.

(7) A person on whom a notice under subsections (1) or (2) is given may, by notice in writing given to the Commissioner within 30 days of the date of issue of the notice, object to that notice on the grounds that it would be onerous for him to comply with it; and if the matter is not resolved by agreement it shall be referred to the Tribunal who may confirm, vary or cancel that notice.

(8) To the extent specified in section 40 the provisions of this section are subject to the restrictions of that section.

Restrictions on Information Power Notices.

40.(1) A notice under section 39(1) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary.

(2) A notice under section 39(2) does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary.

PART 9

ANTI-AVOIDANCE

Anti-avoidance.

41.(1) A tax avoidance arrangement is null and void against the Commissioner for the purposes of this Act. The Commissioner may counteract or disregard any tax advantage that a person has obtained from or under a tax avoidance arrangement.

(2) For the purposes of this Part:

“arrangement” includes but is not limited to a structure, agreement, contract, plan, or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect;

“tax avoidance” includes one or more of the following—

- (a) directly or indirectly altering the incidence of any Top-up Tax;
- (b) directly or indirectly relieving a person from liability to pay Top-up Tax;
- (c) directly or indirectly avoiding, postponing, or reducing any liability to Top-up Tax;

“tax avoidance arrangement” means an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly shows or indicates that the-

- (a) primary purpose or one of the main purposes of the arrangement is to obtain a tax advantage;
- (b) arrangement lacks commercial substance or is artificial in nature;
- (c) the arrangement results in a tax advantage that is not consistent with the legislative intent of the relevant tax provisions; or
- (d) arrangement has the effect of undermining the objectives of the GloBE Model Rules;

“tax advantage” means a financial benefit reducing a Top-up Tax liability;

“lacks commercial substance” means one or more of the following characteristics:

- (a) it involves elements that have no substantial economic effect other than the tax advantage;
 - (b) it results in an allocation of income, expenses, or other tax attributes that are inconsistent with the economic reality of the underlying transaction;
 - (c) it is structured in a manner that disguises or conceals the true nature of the transaction.
- (3) This section shall be construed in such manner as best secures consistency between-
- (a) subsection (1) above;
 - (b) the Model Rules; and
 - (c) the Administrative Guidance.

(4) The definition of connected persons contained in Schedule 4 (Anti Avoidance) to the Income Tax Act 2010 shall apply in determining whether persons are connected for the application of this Part.

Notification of exercise of anti-avoidance provisions.

42.(1) Any decision of the Commissioner under section 41 must be served on any person affected in writing and must identify the –

- (a) person on whom the Top-up Tax shall be assessed;
 - (b) parts of the arrangements which are to be counteracted or disregarded;
 - (c) reasons for the Commissioner’s decision; and
 - (d) amount of the assessment or further assessment proposed or, if an assessment has already been made and is under appeal, the amended assessment proposed.
- (2) An appeal may be brought against the decision of the Commissioner under subsection (1) and subject to the provisions of subsection (3), the provisions of section 35 (Service of assessments and appeals) and Schedule 2 (The Income Tax Tribunal) of the Income Tax Act 2010 shall apply to an appeal against such a decision as they apply to an appeal against an assessment to Top-up Tax.
- (3) On an appeal against a decision of the Commissioner under subsection (2), paragraph 13 of Schedule 2 (*The Income Tax Tribunal*) of the Income Tax Act 2010 shall not apply, but the Tribunal may confirm the decision of the Commissioner or remit that decision back to him for his reconsideration on their findings on the law and facts.

PART 10

PENALTIES AND SURCHARGES

Penalty for failure to file a GloBE Information Return or make a notification.

43. An Ultimate Parent Entity, Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and/or Domestic JV Subsidiary shall may be liable to a penalty of £1,000 if they fail to-

- (a) file a GloBE Information Return; or
- (b) make a notification as required in accordance with this Act.

Statutory Surcharge on Late Payment.

44.(1) If the Top-up Tax due under either Part 3 or Part 4 is not paid by the due date specified in section 29 a surcharge shall be due as follows:

- (a) on the day immediately after the date the Top-Up Tax is due, 2 per cent of the amount of the unpaid Top-up Tax; and
- (b) where any of the Top-up Tax imposed by this Act and surcharge imposed under paragraph (a) above is not paid within 30 days from the date it becomes payable under that paragraph, an amount equal to 5 per cent of the Top-up Tax and surcharge which remains unpaid on that date shall become immediately due and payable.

(2) A surcharge imposed under this section shall be deemed to be part of the Top- up Tax and recoverable in a similar manner in accordance with section 37.

Penalty for failure to keep and preserve records.

45.(1) A person who fails to comply with the requirements of Part 6 of this Act in relation to any Fiscal Year, is liable to a penalty of £5,000.

(2) An appeal shall lie to the Magistrates' Court from a penalty incurred under this section, and on any such appeal the court may either confirm or set aside the penalty.

Offence of falsification etc. of documents in relation to a notice

46.(1) A person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which he has been required by notice under section 38 or section 39 to deliver or make available for inspection.

- (2) A person guilty of an offence under subsection (1) above shall be liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine of £5,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

Penalties for failure to comply with requirements on certain notices.

47.(1) This section applies where –

- (a) a person has been served with a notice under sections 38 or 39; and
- (b) the person fails to comply with the notice.

(2) The person shall be liable to a penalty of £500.

(3) If the failure to comply with the notice continues after the end of the period of one month beginning with the submission date, the person shall be liable to a further penalty of £1,000.

(4) An appeal shall lie to the Magistrates' Court from a penalty incurred under this section and on any such appeal the court may either confirm or set aside the penalty.

(5) In this section “the submission date” means the applicable day for delivering the documents mentioned in the notice issued under sections 38 or 39.

Commissioner's discretion.

48. Notwithstanding any other provision of this Act to the contrary, the Commissioner shall have the power, in his absolute discretion, to waive, reduce or discharge any penalty imposed by this Act if he is satisfied that-

- (a) there was no intention on the part of the person who has incurred the penalty to avoid, evade, delay, defer, or cause the loss of Top-up Tax of that person or another; or
- (b) the act or failure to act which incurred the penalty was otherwise inadvertent; and
- (c) the person committing the act or failing to act, did not intend to deny, delay, impede or howsoever else frustrate the Commissioner in collecting the Top-up Tax due under this Act or in the access to information necessary to the Commissioner's carrying out his duties under this Act.

Enforcement of penalties.

49.(1) A penalty under this Part must be paid before the end of the period of 30 days beginning with the date mentioned in subsection (2).

(2) The date is the date on which notification is given in respect of a penalty under this Part, or if a notice of appeal is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty due under this Part is a debt due to Government and recoverable as a civil debt.

PART 11

MISCELLANEOUS PROVISIONS

Saving for criminal proceedings.

50. The provisions of this Act shall not affect any criminal proceedings under any other Act.

Company wound up.

51.(1) Where a company is being wound up, the liquidator of that company shall not distribute any of the assets of the company to the shareholders thereof or dispose of the company or any assets of the company to any person or persons connected with the company or shareholders of the company unless he has made provision for the payment in full of any Top-up Tax which may be payable by that company.

(2) The definitions contained in Schedule 4 (*Anti Avoidance*) to the Income Tax Act 2010 shall apply in determining whether persons are connected for the purposes of this section.

Repayment of tax.

52.(1) If it be proved to the satisfaction of the Commissioner that an Ultimate Parent Entity, Designated Filing Entity, Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture, and / or Domestic JV Subsidiary for any Fiscal Year has paid Top-up Tax, in excess of the amount is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded.

(2) Every claim for repayment under this section shall be made within ten years from the end of the Fiscal Year to which the claim relates.

(3) The Commissioner shall certify the amount to be repaid and shall cause repayment to be made accordingly.

EXPLANATORY MEMORANDUM

This implements the OECD's Pillar 2 Framework, ensuring compliance with the global minimum tax of 15% and introducing a qualifying domestic top-up tax to safeguard Gibraltar's taxing rights.

**Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price. £1.10.**