

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5194 GIBRALTAR Tuesday 10th December 2024

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B. 35/24

## BILL

FOR

AN ACT to amend the Income Tax Act 2010.

ENACTED by the Legislature of Gibraltar.

### Short Title.

1. This Act may be cited as the Income Tax (Amendment No.3) Act 2024.

### Commencement.

2.(1) Subject to subsections (2) to (6), this Act comes into operation on the day of publication.

(2) Section 3(2) shall be deemed to have come into operation on 1<sup>st</sup> July 2018.

(3) Section 3(5) to(8), 3(10)(c) and 3(11) shall be deemed to have come into operation on 1<sup>st</sup> July 2016.

(4) Section 3(3)(a), (c), (d) and (e), 3(9), 3(10)(d), (e) and (g) shall be deemed to have come into operation on 1<sup>st</sup> July 2022.

(5) Section 3(4) shall come into operation on 1<sup>st</sup> January 2025.

(6) Section 3(10)(a), (b), (f), (h) and 3(12) shall be deemed to have come into operation on the 1<sup>st</sup> July 2023.

(7) Section 3(3)(b) shall be deemed to have come into operation on 1<sup>st</sup> July 2024.

### Amendment of the Income Tax Act 2010.

3.(1) The Income Tax Act 2010 is amended in accordance with this section.

(2) After section 20(4) insert—

“(5) For the purposes of this section, a change in ownership means a change in effective control, whether by virtue of a change in direct or indirect ownership of voting shares together with a change in beneficial ownership.

**Transfer of allowable trade losses.**

20A.(1) Subject to the provisions of this section, where a trade or business is transferred to a separate legal entity and is part of a group restructure, any corresponding unrelieved tax losses arising previously in relation to that trade or business may be available to be set off against future profits of that separate legal entity.

(2) The transferred unrelieved tax losses referred to in subsection (1) above, shall only be available to set off against future profits if that trade or business would have been taxable under the provisions of this Act had it given rise to taxable profits.

(3) No set off shall be given under subsection (1) above, if within any period of three years from the date of transfer, there is a—

- (a) change in the ultimate ownership of the company; and
- (b) major change in the nature or conduct of that trade or business.

(4) The unrelieved tax losses available for set off under subsection (1) above, shall be restricted proportionally, on the basis of income attributable to each share of the trade, to that part of the trade or business transferred.

(5) For the purposes of this section, a change in ownership means a change in effective control, whether by virtue of a change in direct or indirect ownership of voting shares together with a change in beneficial ownership.

(6) For the purposes of this section “group restructure” includes a re-organisation, take-over, merger or sale of a trade or business.”.

(3) In section 30-

- (a) in subsection (1)(b) and (bb) for “£1,250,000” substitute “£1,500,000” on the four occasions that figure appears;
- (b) in subsection (1)(b) and (bb) for “£1,500,000” substitute “£1,750,000” on the four occasions that figure appears;
- (c) for subsection (1)(cb)(ii) substitute-
  - “(ii) appropriately qualified by virtue of holding a practising certificate issued by a recognised international accountancy body;”;
- (d) in subsection (1)(cb)(ii), delete “and”;
- (e) delete subsection (1)(cb)(iii);
- (f) after subsection (2) insert-

“(3) The Minister may by regulations increase or decrease the level of assessable income below which a return made in accordance with section 29 is to be accompanied by an independent accountant’s report.”.

(4) For section 65 substitute—

“65.(1) This section applies where any person—

- (a) has failed to make a full and complete return for the purposes of section 28 or 29; and
- (b) has failed to deliver such return.

(2) In the event of a person failing to complete a return for the purposes of section 28—

- (a) that person shall be liable to a penalty of £50;
- (b) if the failure by the person to comply continues after the period of—
  - (i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £300;
  - (ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £500.

(3) In the event of a person failing to complete a return for the purposes of section 29—

- (a) any person classified as a micro company or small company shall be liable to a penalty of £100 and if the failure by the person to comply continues after the period of —
  - (i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £450;
  - (ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £750;
- (b) any person classified as a medium company shall be liable to a penalty of £750 and if the failure by the person to comply continues after the period of —

- (i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £1,250;
  - (ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £2,000;
- (c) any person classified as a large company shall be liable to a penalty of £1,500 and if the failure by the person to comply continues after the period of –
  - (i) three months beginning with the filing date on which the return should have been delivered, the person shall be liable to a further penalty of £3,500;
  - (ii) six months beginning with the filing date on which the return should have been delivered, the person shall be liable to an additional penalty of £5,000;

For the purposes of this subsection, the company size classification shall have the same meaning as that contained in Schedule 9 to the Companies Act 2014.

- (4) The Commissioner may, if it appears to him that throughout the period of default mentioned in subsections (2) or (3) above, the person had a reasonable excuse for not complying with the requirements of section 28 or 29, set aside–
  - (a) one or more of the penalties under subsection (2);
  - (b) the penalty under subsection (3).
- (5) In this section–

“the filing date” means the applicable day for delivering the return under section 28 or, as the case may be, section 29;

“the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return is delivered.”.

- (5) After section 77(1) insert –

“(1A) An individual who between 6 July 2016 and 5 January 2017-

- (a) remits to Gibraltar any money which –
  - (i) is held outside Gibraltar; and

(ii) represents the product of income accrued and derived in Gibraltar; or

(b) holds an asset outside Gibraltar purchased with income accrued and derived from Gibraltar,

shall on the payment of the penalty charge set out in subsection (1B), not be liable to a further charge to tax on the money remitted or the asset held.

(1B) The penalty charge for the purposes of subsection (1A) is 7.5% of the-

(a) sum of monies remitted under subsection (1A)(a); or

(b) value of the asset referred to subsection (1A)(b) on the date of purchase.”.

(6) In section 77(2) after-

(a) “subsection (1)” insert “and (1B)”; and

(b) “monies” insert “or assets”.

(7) In section 78(1) substitute “on or after 22 December 2015” with “between the period 22 December 2015 and 5 July 2016, or on or after 5 January 2017,”.

(8) After section 78(1) insert –

“(1A) Where on or after 5 January 2017, the Commissioner receives information, pursuant to the procedures for the exchange of information between tax authorities, that an asset –

(a) is held outside Gibraltar;

(b) was purchased with monies from income accrued and derived in Gibraltar; and

(c) information regarding such monies has not been included in any return so as to allow the Commissioner to assess its chargeability to tax under the Act,

the Commissioner shall issue a penalty charge which corresponds to 100% of the tax due under this Act.”.

(9) After section 78 insert-

**“Corporate Tax Amnesty.**

79.(1) Any company that, believes they have under-declared their profits in the returns

filed in relation to their 2020 and 2021 accounting periods and as a result have been assessed at a level lower than what they should have been, may, before 31 December 2022, elect to revise their position and file amended returns accordingly.

(2) Any company filing amended returns under subsection (1) above will be required to pay the taxation consequently assessed within 90 days after the date the assessment is made and shall not be liable to a further charge to tax.

(3)(a) Any company not filing amended returns under subsection (1) above but found to have under-declared their profits and as a result have been assessed at a level lower than what they should have been will be required to pay the taxation assessed and shall also be liable to a further charge equivalent to the entirety of the amount assessed to tax;

(b) any company identified from (a) above shall be required to pay the full amount of the taxation assessed and the further charge contained therein within 60 days after the date the assessment is made.”.

(10) In Schedule 3–

(a) after paragraph 2(1)(p) insert–

“(q) the special assistance payment.”;

(b) after paragraph 4 insert–

**“Special assistance payment.**

4A.(1) In this Act, “special assistance payment” means a payment falling within the provisions of Schedule 13.

(2) The Minister may by Regulations under this paragraph amend Schedule 13 so as to add, remove or modify a provision.”;

(c) after paragraph 17 insert –

**“Tax credit for Start-Ups.**

17A.(1) Where the Commissioner is satisfied on the application of a company, limited partnership or limited liability partnership that–

(a) the said company or partnership commenced business in Gibraltar on or after 5 July 2016 but before 1 July 2017;

(b) such business relates to a bona-fide new activity in Gibraltar;

(c) the business does not represent a transfer of business previously existing in Gibraltar or the allocation of profits from a business previously existing in Gibraltar; and

(d) employs at least five employees in its first year of trading or business, the Commissioner may direct that the said company or partnership shall be eligible for a tax credit in respect of its first 3 years of trading or business which is equal to the tax due in a year of assessment or accounting period, as the case may be, up to a maximum of £50,000 per year.

(2) The tax credit available in a year of assessment or accounting period, as the case may be, shall not be available for carry forward or set off in any other year of assessment.

### **Tax credit for properties.**

17B.(1) Where the Commissioner is satisfied that a property –

(a) was rented for residential purposes; and

(b) constructed between 1 July 2016 and 1 January 2019,

the owner of such property shall be entitled to a tax credit in accordance with this paragraph.

(2) The tax credit shall be equal to the tax payable on any profits earned by the owner of the property during the first 24 months of rental income.

(3) The rental income must be received within the first five years following the date of completion of the development in which the property is located.

(4) No tax credit shall be permitted under this paragraph unless the claim for the tax credit is accompanied by a certificate of completion of development.”.

(d) in paragraph 18(2) for “30 June 2023” substitute “30 June 2022”;

(e) for paragraph 18(3) substitute-

“(3) For the purposes of this paragraph-

“marketing and promotion” means any costs incurred in relation to the advertising or promotion of Gibraltar as a-

(i) destination for the purposes of enhancing tourism, attracting visitors for leisure-related events, conventions, conferences or similar gatherings, or

(ii) jurisdiction for the purposes of attracting new business ventures and enterprises to set up and operate in and from Gibraltar.”;

(f) after paragraph 19 insert–

**“Health and fitness.**

19A.(1) An individual shall be eligible to claim a tax credit under this paragraph against his tax liability.

(2) The tax credit shall not exceed 10 per cent of the total cost incurred by the individual referred to in sub-paragraph (1) above, in relation to–

- (a) his enrolment or membership in a gymnasium or fitness centre in Gibraltar;
- (b) the contracted fitness related services of a personal trainer in Gibraltar.

(3) For the purposes of sub-paragraph (2)–

- (a) a claim shall only be allowed in relation to the services provided by a personal trainer who is registered with the Income Tax Office and is compliant with his tax obligations to the satisfaction of the Commissioner; and
- (b) any claim made under sub-paragraph (2) must be accompanied by evidence in support of the entirety of the costs incurred to the satisfaction of the Commissioner.

(4) The tax credit shall not exceed the lower of–

- (a) 10 per cent of the total cost incurred referred to in sub-paragraph (2) above; or
- (b) the tax liability of the individual referred to in sub-paragraph (1).

(5) Any remaining balance in the tax credit under sub-paragraph (4) above shall be reduced to zero and shall not be available for transfer or carry forward by way of set off against any tax liability in respect of any year of assessment.

**Private Education.**

19B.(1) A parent, who pays private school tuition fees in Gibraltar in respect of his child, shall be eligible to claim a tax credit under this paragraph against his tax liability.

(2) The tax credit shall not exceed 10 per cent of the cost incurred by the parent referred to in sub-paragraph (1) above in relation to the total private school tuition fees paid in Gibraltar in respect of that child.

(3) For the purposes of this paragraph—

(a) “child” includes a stepchild, an illegitimate child and a child adopted in accordance with an order made by a court of competent jurisdiction;

(b) “private school” means an institution which provides primary or secondary education in Gibraltar and excludes nursery schools; and

(c) any claim must be accompanied by evidence in support of the entirety of the costs incurred to the satisfaction of the Commissioner.

(4) The tax credit shall not exceed the lower of—

(a) 10 per cent of the total cost incurred referred to in sub-paragraph (2) above; or

(b) the tax liability of the parent referred to in sub-paragraph (1) above.

(5) Any remaining balance in the tax credit under sub-paragraph (4) above shall be reduced to zero and shall not be available for transfer or carry forward by way of set off against any tax liability in respect of any year of assessment.

**Sole practitioners.**

19C.(1) An individual who is a sole practitioner shall be eligible to claim a tax credit under this paragraph against his tax liability.

(2) For the purposes of this paragraph, “sole practitioner” means an individual registered with the Legal Services Regulatory Authority to conduct or provide a legal service in Gibraltar who is a sole practitioner and does not carry out any professional activity in common with other practitioners; whether in a set of chambers, partnership, firm, company or any other arrangement.

(3) The tax credit shall not exceed 75 per cent of the total fees showed to have been paid by the individual referred to in sub-paragraph (1) above to the Legal Services Regulatory Authority in Gibraltar.

(4) The tax credit available shall not exceed the lower of—

(a) 75 per cent of the total fees incurred referred to in sub-paragraph (3) above; or

(b) the tax liability of the individual sole practitioner referred to in sub-paragraph (1) above.

(5) For the purposes of this paragraph, any claim must be accompanied by evidence in support of the entirety of the costs incurred to the satisfaction of the Commissioner.”;

(g) for paragraph 20(2)(f) substitute—

“(f) paragraph 19.”;

(h) for paragraph 20(2)(f) substitute—

“(f) paragraphs 18 to 19C.”.

(11) In Schedule 6, Part 1 substitute paragraph 1 with —

“1.(1) Subject to subparagraph (2), any Company falling within paragraphs 3 to 17 of this Schedule shall be liable to pay tax at the higher rate of 20% of the taxable income of that company under this Act for each accounting period.

(2) A company falling within paragraph 3 of this Schedule shall be liable to pay tax at the higher rate of 20% only on taxable income made from the provision of services described in subparagraphs (1) to (9) of paragraph 3.”.

(12) After Schedule 12 insert—

### **“SCHEDULE 13**

#### **SPECIAL ASSISTANCE PAYMENT**

1. A payment qualifies as a “special assistance payment” if—

(a) it is paid in the tax year commencing on 1 July 2023 and ending on 30 June 2024; and

(b) where it is paid to a public sector worker, it falls within paragraph 2; or

- (c) where it is paid to an employee that is not a public sector worker, it falls within paragraph 3.

2. The special assistance payment in respect of a public sector worker is—

- (a) £1,200 where a worker is in receipt of a basic pay that is under £50,000;
- (b) £900 where a worker is in receipt of a basic pay that is between £50,000 and £75,000 (both figures inclusive);
- (c) £600 where a worker is in receipt of a basic pay that is over £75,000 and not more than £100,000.

3.(1) The special assistance payment in respect of an employee that is not a public sector worker is—

- (a) £1,200 where an employee is in receipt of a basic pay that is under £50,000;
- (b) £900 where an employee is in receipt of a basic pay that is between £50,000 and £75,000 (both figures inclusive);
- (c) £600 where an employee is in receipt of a basic pay that is over £75,000 and not more than £100,000.

(2) A payment made in accordance with subparagraph (1) must be excluded from the statement made by the employer on the form required under regulation 10 of the Income Tax (Pay As You Earn) Regulations, 1989.”.

**EXPLANATORY MEMORANDUM**

This Bill amends the Income Tax Act 2010.

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