

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5221 GIBRALTAR Thursday 10th April 2025

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B. 06/25

## 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) Act 2025.

**Commencement.**

2. This Act comes into operation on the day of publication.

**Amendment of the Income Tax Act 2010.**

3. For section 40 of the Income Tax Act 2010 substitute –

**“Anti-avoidance.**

40.(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 section-

“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 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 any one of the following -

(a) the primary purpose or one of the main purposes of the arrangement is to obtain a tax advantage;

(b) the arrangement results in a tax advantage that is not consistent with the legislative intent of the relevant tax provisions; or

(c) the arrangement has the effect of undermining the objectives of this Act,

and for these purposes, tax avoidance includes an action which, directly or indirectly involves one or more of the following—

(a) altering the incidence of any taxation under this Act;

(b) relieving a person from liability to pay taxation under this Act;

(c) avoiding, postponing, or reducing any liability to taxation under this Act;

“tax advantage” means a financial benefit where the Commissioner believes that a person who is or would otherwise be chargeable to taxation in accordance with this Act has entered into an arrangement which eliminates, reduces or would eliminate or reduce the amount of the taxation payable.

(3) This section shall be construed in such manner as best secures consistency between-

(a) subsection (1) above;

(b) internationally accepted principles for the determination of profit in respect of activities within a multinational group of companies;

(c) documents published by the Organisation for Economic Co-operation and Development as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, together with such documents issued by that Organisation as comprised in the transfer pricing guidelines.

(4) The provisions of this Part and Schedule 4 shall apply in addition to subsection (1).

(5)(a) The Commissioner may refer any person to their professional or regulatory body where the Commissioner reasonably believes that the person –

(i) has submitted, or assisted with the submission of a tax return which the person knows to be inaccurate or incomplete or suspects that it may be inaccurate or incomplete but has deliberately withheld that suspicion from the Commissioner; or

- (ii) is promoting, facilitating or advising on a tax avoidance arrangement that contravenes the spirit and purpose of this Act; or
  - (iii) is considered to have acted with a conflict of interest.
- (b) for the purposes of this section a "conflict of interest" arises when a person provides professional services while having a financial, personal or other interest that impairs their objectivity or duty of care in the provision of those services;
- (c) in determining whether a person has engaged in a tax avoidance arrangement, the Commissioner shall apply a substance-over-form approach, considering but not limited to -
- (i) the economic reality of the arrangement; or
  - (ii) the artificiality of the arrangement; or
  - (iii) whether the arrangement is designed primarily for obtaining a tax advantage;
- (d) the burden of proof shall rest with the person to demonstrate to the Commissioner that the arrangement was not designed, marketed, or implemented for a tax avoidance purpose.
- (6)(a) The Commissioner may counteract or disregard any election under rules 3(55) and 3AA of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 if he believes that the motive behind the election is to gain a tax advantage.
- (b) In determining the motive behind the election for the purposes of paragraph (a), regard shall be had to all the circumstances, including but not limited to the following –
- (i) whether the substantive results of the election are consistent with the principles on which rules 3(55) and 3AA of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 are based, whether express or implied, and the policy objectives of those provisions;
  - (ii) whether the means of achieving those results involves one or more contrived or abnormal steps;
  - (iii) whether the arrangements are intended to exploit any shortcomings in those provisions.
- (7) The Commissioner may counteract or disregard any tax avoidance arrangement or deferral of tax by the shareholders of a company by the accumulation in the company of income profits arising after the commencement of this Act followed by the voluntary liquidation of that company, then, the proceeds from the

liquidation so received, or receivable, shall be deemed to be a dividend paid by the company and received by the shareholder.

- (8) The Commissioner may counteract or disregard the application of section 19 of this Act in relation to any emoluments, fees or remuneration if he believes such amounts lack sufficient economic reality by reference, but not limited, to the following –
- (a) the quantum of emoluments, fees or remuneration are excessive in comparison to the individual's role, duties and financial standing of the person making the payment;
  - (b) whether the emoluments, fees or remuneration lack commercial substance; and
  - (c) the payment of these emoluments, fees or remuneration are structured primarily to achieve non taxation under this Act.
- (9) The Minister may make regulations for the purposes of the effective operation of this section.
- (10) Any charge to tax arising out of the operation of counteracting or disregarding a tax advantage, including that obtained under a tax avoidance arrangement, may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise unless otherwise specified.”.

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### **EXPLANATORY MEMORANDUM**

This Bill amends the Income Tax Act 2010.

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