

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3524 of 30th March, 2006

B. 10/06

BILL

FOR

AN ORDINANCE to amend the Income Tax Ordinance in order to complete the transposition into the law of Gibraltar of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance 2006.

Amendment of the Income Tax Ordinance.

2.(1) The Income Tax Ordinance is amended in accordance with the provisions of this section.

(2) Section 47A(1) is amended as follows—

(a) by substituting for the definition of “company”, the following definition—

““company” has the same meaning as the expression “company of a member State” in article 3(a) of the Directive as set out in Schedule 2 and for the avoidance of doubt includes a company established under the Companies Ordinance;”.

(b) by substituting for the definition of “permanent establishment” the following definition -

"permanent establishment" means–

- (a) a fixed place of business situated in Gibraltar through which the business of a company of a member State is wholly or partly carried on;
- (b) a fixed place of business situated in a member State through which the business of a company of Gibraltar is wholly or partly carried on;
- (c) a fixed place of business situated in a member State through which the business of a company of another member State is wholly or partly carried on;”;

- (c) The definition of “source State” is amended by inserting after “means the State”, the words “or territory”;

(3) Section 47C(4) is amended by deleting the words “in his absolute discretion”, and by inserting after the words “tax at source”, the words “at the time of payment”.

(4) For section 47D, there shall be substituted the following section–

“Special provision for certain States.

47D.(1) This section shall cease applying–

- (a) in the case of Greece, Latvia, Poland and Portugal, 8 years;
and
- (b) in the case of Spain, the Czech Republic or Lithuania, 6 years,

after article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments comes into force.

(2) In the case of the Slovak Republic, this section shall cease applying on 30 April 2006.

(3) Where a company or permanent establishment situated in Gibraltar–

- (a) receives interest or royalties from an associated company of Greece, Latvia, Lithuania, Poland and Portugal;
- (b) receives royalties from an associated company of Spain, or the Czech Republic;
- (c) receives interest or royalties from a permanent establishment situated in Greece, Latvia, Lithuania, Poland and Portugal of an associated company; or
- (d) receives royalties from a permanent establishment situated in Spain or the Czech Republic of an associated company,

there shall be allowed an amount equal to the tax paid in Greece, Spain, Portugal, the Czech Republic, Latvia, Lithuania or Poland on that income as a deduction from the tax on the income of the company or permanent establishment which received that income.

(4) The deduction provided for in subsection (3) shall not exceed the lower of—

- (a) in the case of Greece, Latvia, Poland and Portugal, 10% during the first four years and 5% during the final four years;
- (b) in the case of Spain and the Czech Republic, 10% during the six years;
- (c) in the case of Lithuania, 10% during the first four years and 5% during the final two years;
- (d) in the case of the Slovak Republic, an amount equal to the tax paid on that income as a deduction from the tax on the income of the company or permanent establishment which received that income; or
- (e) that part of the tax on the income of the company or permanent establishment which received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the Income Tax Ordinance where the permanent establishment is situated in Gibraltar.”.

(5) Section 47F is amended as follows—

(a) in subsection (2)(b), after “Schedule 2” there is inserted the words “or in the case of Belgium to the ‘impôt des non-résidents/belasting der niet-verblijfhouders’ or in the case of Spain to the ‘Impuesto sobre la Renta de no Residentes’;

(b) the following is inserted after subsection (2)–

“ (3) Where a permanent establishment of a company is treated–

- (a) in accordance with section 47E as the payer; or
- (b) in accordance with this section, as the beneficial owner,

as the case may be of interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for any purpose connected with this Part.”

(6) Section 47I is amended by substituting for subsection (2) the following subsection–

“ (2) For the purposes of subsection (1), the written statement shall be valid for at least one year but for not more than three years from the date of issue and shall provide–

- (a) proof of residence for tax purposes of the company which is the beneficial owner, and where necessary, the existence of a permanent establishment certified by the tax authority of the Member State in which the receiving company is resident for tax purposes or in which the permanent establishment is situated;
- (b) information as to the beneficial ownership of the company set out in paragraph (a) of the income in respect of which the payment is made in accordance with section 47F;
- (c) information establishing that the company set out in paragraph (a) is subject to tax and details of the corporation tax or tax corresponding to that tax to which the company is subject;

- (d) information establishing that the payer, the company and its beneficial owners are associated companies within the meaning of this Part and, in particular, sections 47A(2) and 47C(2)(a)(ii);
- (e) details of the period during which the relations between the payer, the company and its beneficial owners has existed in accordance with paragraph (d);
- (f) a copy of the loan agreement or other document providing the legal justification for the interest payment.”

(7) Section 47M(1) is amended by substituting for the word “Part”, in both instances where that word appears, the word “Ordinance”.

(8) Schedule 2 is amended as follows—

- (a) in Part 1, by inserting after “corporation tax in the United Kingdom” the following words—

- “— Daň z příjmů právnických osob in the Czech Republic,
- Tulumaks in Estonia,
- φόρος εισοδήματος in Cyprus,
- Uzņēmumu ienākuma nodoklis in Latvia,
- Pelno mokestis in Lithuania,
- Társasági adó in Hungary,
- Taxxa fuq l-income in Malta,
- Podatek dochodowy od osób prawnych in Poland,
- Davek od dobička pravnih oseb in Slovenia,
- Daň z príjmov právnických osôb in Slovakia.”;

(b) in Part 2, by inserting after “companies incorporated under the law of the United Kingdom” the following words–

“companies under Czech law known as: “akciová společnost”, “společnost s ručením omezeným”, “veřejná obchodní společnost”, “komanditní společnost”, “družstvo”;

companies under Estonian law known as: “täisühing”, “usaldusühing”, “osaühing”, “aktsiaselts”, “tulundusühistu”;

companies under Cypriot law known as: companies in accordance with the Company's Law, Public Corporate Bodies as well as any other Body which is considered as a company in accordance with the Income tax Laws;

companies under Latvian law known as: “akciju sabiedrība”, “sabiedrība ar ierobežotu atbildību”;

companies incorporated under the law of Lithuania;

companies under Hungarian law known as: “közkereseti társaság”, “betéti társaság”, “közös vállalat”, “korlátolt felelősségű társaság”, “részvénytársaság”, “egyesülés”, “közhasznú társaság”, “szövetkezet”;

companies under Maltese law known as: “Kumpaniji ta' Responsabilita' Limitata”, “Soċjetajiet in akkomandita li l-kapital tagħhom maqsum f'azzjonijiet”;

companies under Polish law known as: “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”;

companies under Slovenian law known as: “delniška družba”, “komanditna delniška družba”, “komanditna družba”, “družba z omejeno odgovornostjo”, “družba z neomejeno odgovornostjo”;

companies under Slovak law known as: “akciová spoločnosť”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť”, “verejná obchodná spoločnosť”, “družstvo”.”.

EXPLANATORY MEMORANDUM

This Bill amends the Income Tax Ordinance in order to complete the transposition into the law of Gibraltar of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, in particular, by transposing Directive 2004/76/EC of 29 April 2004 and by Directive 2004/66/EC of 26 April 2004.

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