

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5164 GIBRALTAR Thursday 25th July 2024

B. 23/24

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. 2) Act 2024.

Commencement.

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

(2) Section 3(3) is deemed to have come into operation on 1 August 2024.

Amendment to Income Tax Act 2010.

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

(2) In section 3 -

(a) insert the following after subsection (6)-

“(6A) Where the Gibraltar Financial Intelligence Unit makes a lawful request to the Commissioner to provide it with information in the Commissioner’s possession, nothing in this section prevents the Commissioner from disclosing that information to the Gibraltar Financial Intelligence Unit.”;
and

(b) insert the following after subsection (8)-

“(9) In subsection (6A) “Gibraltar Financial Intelligence Unit” means the financial intelligence unit established under section 1B of the Proceeds of Crime Act 2015;”.

(3) In Schedule 1 –

- (a) after “HEADS OF CHARGE” insert “PART 1”;
- (b) in Table A, for paragraph (2) substitute –
 - “(2) Any rents, premiums and any other profits arising from any interest in real property including as set out in Part 2 of this Schedule”;
- (c) after the paragraph titled “Class 6” insert -

“PART 2

Section 11

PROFITS DERIVED FROM DISPOSALS OF INTEREST IN A RESIDENTIAL PROPERTY

1.(1) For the purposes of this Part of this Schedule unless the context provides otherwise –

“entity” means a company, trust, foundation or partnership incorporated or established in accordance with the laws of Gibraltar or elsewhere.

“exempted property” means:

- (a) a property which is used exclusively as the primary residence by the beneficial owner of such property in Gibraltar;
- (b) a property which is subject to Part II of the Housing Act 2007 or would be subject to Part II of the Housing Act 2007 were it not for the issuance of a certificate under s49 of the Housing Act 2007;
- (c) a property which is a commercial property;
- (d) where a property has mixed residential and commercial use a property which is predominantly of commercial use;
- (e) a hotel;
- (f) subject to subparagraph (6), a property which is unfit for human habitation;
- (g) subject to subparagraph (6), a property certified as being in need of substantial repair by the official surveyor;

- (h) a property which is held by the Government of Gibraltar or a statutory agency in regard to residential accommodation for the purposes of said agency or the Government of Gibraltar;
- (i) any property designated as an exempted property by the Minister with responsibility for Taxation;
- (j) any property reserved for occupancy as a retirement home by persons aged over 65 or for those unable to care for themselves independently or other form of residential care facility including whether communal or otherwise subject to the satisfaction of the Commissioner of Income Tax;
- (k) any property utilised as a retreat, convent, monastery or other form of religious house whether for the benefit of a group of religious observants or of a sole minister, whatever the denomination or religion including whether communal or otherwise subject to the satisfaction of the Commissioner of Income Tax.

“off plan”, in relation to a property, means the right to acquire or purchase a beneficial interest (a ‘relevant interest’) in a property not yet built, or if construction has commenced, which is not yet completed, through a reservation agreement, purchase agreement, assignment of such a relevant interest or other arrangement (the ‘relevant arrangement’) under which the beneficial ownership in the property which is the subject of the relevant arrangement is ultimately assigned, novated or is otherwise transferred;

“primary residence” means a residence within Gibraltar which is utilised as the only or main residence of a person at any given time including at the time of disposal;

“property” means any plot, building, apartment or other real property situate in Gibraltar, used or intended to be used for residential purposes and whether leasehold or freehold;

“property holding entity” means an entity whose principal activity in the last basis period consists of the ownership, holding or management of real property in Gibraltar;

“taxable property” means any residential property, including off-plan property, located in Gibraltar other than an exempted property.

- (2) Where any person owns or holds, directly or indirectly, including through a property holding entity:
 - (a) three or more taxable properties, whether in whole or in part; or

- (b) an aggregate in three or more taxable properties, whether in whole or in part, over five consecutive basis periods,

the following shall be chargeable to tax under the provisions of Section 11 and Schedule 1 of this Act:

- (i) the amount arising from the disposal of any such property by the person or the property holding entity as though the amount arising is income of that person or entity; and
 - (ii) the amount arising from the disposal of shares, directly or indirectly, in a property holding entity by the person, or any nominee holding shares on behalf of the person, as though the amount arising is income of that person.
- (3) Subparagraph (2) shall not apply to a disposition if this is due to either:
 - (a) the exercise of a power of sale pursuant to a mortgage on the residential property; or
 - (b) any order of a court ordering a sale of the residential property.
- (4) In determining a person's interest in a taxable property that person may be treated as being entitled to the interests of all connected persons, as defined in Schedule 4, paragraph 9 of this Act.
- (5) Subparagraph (4) shall not apply to the bona fide interest of a connected person if the ownership of such interest is not for the purpose of avoidance of the charge to tax.
- (6) Any property unfit for habitation or in need of substantial repair shall be treated as an exempted property if, on application to the Commissioner of Income Tax, the Commissioner is satisfied that the purchase of the property is for the purpose of development to permit resale or letting.
- (7) A disposal by the estate of a deceased person shall not be charged to tax under this Part of this Schedule.
- (8) The Commissioner of Income Tax shall have the power to treat any conveyancing transaction as a disposal where he is of the opinion that this transaction has as its main purpose, or one of its main purposes, the avoidance of a charge to tax.”

EXPLANATORY MEMORANDUM

This Bill amends section 3 of the Income Tax Act 2010 in order to allow the Commissioner of Income Tax to provide the Gibraltar Financial Intelligence Unit with information where the GFIU makes a lawful request.

This Bill also introduces the measure announced by the Minister with responsibility for Taxation in the 2024 Budget in relation to the income derived from the disposal of interest in a taxable property where a person holds three or more properties other than their primary residence or other exempted property.

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