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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Code of Conduct Group (Business Taxation)
– Report to the Council
= Endorsement

Gibraltar's treatment of asset holding companies (UK020)

The following rollback was agreed by the Code of Conduct Group on 21 September 2018:

a. Previous assessment (see docs. 10608/14 and 9912/16):

The European Commission (DG Competition) opened a formal state aid investigation procedure in order to investigate certain aspects of Gibraltar's Income Tax Act 2010 on 16 October 2013.

Spain reiterated the need to examine other aspects of the Gibraltar tax regime not covered by the state aid procedure and provided the Group with information on other potentially harmful parts of the Gibraltar tax regime. At the meeting on 18 March 2014, the Commission circulated a paper presenting the information provided by Spain and the UK's comments on it. Aspects identified included inbound profit transfers and 'shell companies':

1- With regard to inbound profit transfers the Group agreed to consider Gibraltar's compliance in conjunction with other Member States and their associated territories.

2- As regards shell companies the UK and Gibraltar will provide relevant information in order to further examine their tax treatment during the Italian Presidency.

At the meeting on 2 February 2016, the Group decided to ask the Commission Services to prepare a draft assessment of the treatment of the asset holding companies under Gibraltar's 2010 Income Tax Act. This draft assessment was presented at the COCG meeting on 12 April 2016.

After the draft assessment has been circulated to the Group, the UK and the Government of Gibraltar were given the opportunity to provide additional factual information about the companies' income for the final assessment. The Group considered part of the regime as harmful, as it was pre-assessed by the Commission services.

b. Rollback amendments (see annex):

The amendment to ITA10 sets out a new class of income (Class 3b "Income from Movable Property") and deems such income received by a company registered in Gibraltar to accrue in and derive from Gibraltar. The relevant charging provision from ITA10 by virtue of which such Class 3b income would be taxable is set out under the heading "PART II CHARGE TO TAX."

The legislative change ensures that where non-trading rental income is received by a Gibraltar company in respect of movable assets located outside of Gibraltar, such income will now be taxed in Gibraltar.

ANNEX

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4520 of 22 November, 2018

LEGAL NOTICE NO. 261 OF 2018.

INTERPRETATION AND GENERAL CLAUSES ACT INCOME TAX (AMENDMENT) REGULATIONS 2018

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of implementing obligations falling within the Treaties, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Income Tax (Amendment) Regulations 2018 and come into operation on the date of publication.

Amendment of Income Tax Act 2010.

2.(1) The Income Tax Act 2010 (“the Act”) is amended in accordance with the provisions of this regulation.

(2) In Table C of Schedule 1 to the Act, after Class 3A, insert the following—

“Class 3B
“Income from Movable Property”

- (a) Subject to (b) below, any non-trading rental income arising from a movable property located outside of Gibraltar received or receivable by a company.
- (b) For the purposes of (a) above, any non-trading rental income arising from a movable property located outside of Gibraltar will be deemed to accrue in and derive from Gibraltar where the company in receipt of that income is a company registered in Gibraltar.”

Dated 22nd November, 2018.

F R PICARDO,
For the Government

EXPLANATORY MEMORANDUM

These Regulations amend the Income Tax Act 2010 for the purposes of satisfying EU requirements

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