Ordinance 1 of 2018

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INCOME TAX (AMENDMENT) ORDINANCE 2018

An Ordinance to amend the Income Tax Ordinance 2003

J. Illingworth
ADMINISTRATOR

18 January 2018

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title

1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance 2018.

Commencement

2. This Ordinance comes into force on 22 January 2018.

Amendment of the Income Tax Ordinance 2003

3. The Income Tax Ordinance 2003(**a**) is amended as follows.

Amendment of section 2

4.—(1) Section 2 (interpretation) is amended as follows.

(2) At the appropriate place in alphabetical order insert—

"“innovative business” means any business which—

(a) may satisfy the Commissioner by way of an expert report that it may in the near future develop new or substantially improved products, services or processes, or

(b) has research and development costs of no less than 10% of its total operational costs in any year of the preceding three years' period;".

(3) In the definition of “permanent establishment”, at the end of paragraph (b) insert—

“(vii) any place for the extraction and exploitation of the continental shelf, subsoil or natural resources, for the installation and exploitation of pipes or other equipment in the sea bed;”.

Amendment of section 8

5.—(1) Section 8 (exemptions) is amended as follows.

(2) At the end of paragraph (j) insert “or from leasing property”.

(3) At the end of paragraph (n) for “;” substitute “:” and insert—

“Provided that, where a company resident in the Areas, or a company non-resident in the Areas but having a permanent establishment in the Areas, receives dividends, tax exemption does not apply to the extent that the dividends are deducted for purposes of determining foreign tax on the income of the company paying the dividends;”.

(4) In paragraph (o) for the last sentence substitute “This exemption applies to employment commenced in 2012 or in any subsequent year. The exemption starts on 1 January of the year following the year in which employment commenced and applies for a maximum period of five years or until the year 2020, whichever is sooner;”.

(5) After paragraph (p) insert—

“(q) any profit accrued from the fluctuation of currency exchange rates, except where profit is accrued as a result of exchange trading;

(r) any profit accrued by an individual (A) between 21 December 2015 and 31 December 2017 as a result of direct or indirect disposal or transfer of immovable property or rights derived from a contract of sale, for the purpose of reducing or paying off any credit facility, grant or debt:

Provided that, where following the disposal of immovable property or rights derived from a contract of sale, any profit is returned to or retained by A, the tax exempt under this paragraph is paid on the amount of profit that is returned or retained.”

Amendment of section 9

6.—(1) Section 9 (deductions allowed) is amended as follows.

(2) In subsection (1), in paragraph (d) after “business” (in the first place it occurs) insert “and costs for research and development incurred by small or medium-sized innovative businesses,”.

(3) Amend subsection (1), paragraph (e)(iii) as follows—

(**a**) Ordinance 29/2003, as amended by Ordinances 19/2011, 13/2012, 31/2013 and 17/2014.

(a) for "; and" substitute ":";

(b) at the end insert—

"Provided that, where loss instead of profit incurs, the amount of such loss can be set off by up to 20% in accordance with the provisions of section 13 (allowance of trade losses); and".

(4) In subsection (1) after paragraph (j) insert—

"(k) unless deductions are allowed under paragraph (e), 80% of the selectable profit produced by a selectable intangible asset:

Provided that, where loss instead of profit incurs, the amount of such loss can be set off by up to 20% in accordance with the provisions of section 13 (allowance of trade losses)."

New section 9A

7. After section 9 (deductions allowed) insert—

"**Deducted costs for investment in small or medium-sized innovative business**

9A.—(1) Any costs incurred by an individual (A) as an independent investor, either directly or indirectly, in a small or medium-sized innovative business are to be deducted from the taxable income of A for the tax year 2017 and any subsequent year until 31 December 2019 if—

(a) A has not disposed of the investment for at least three years,

(b) A is not an existing shareholder of the innovative business benefiting from the investment,

(c) the amount deducted does not exceed €150,000, and

(d) the amount deducted does not exceed 50% of the taxable income of A.

(2) Any amount not deducted because of paragraph (d) in subsection (1) may be deducted in the next tax year."

Amendment of section 10

8. In section 10 (reductions and additions on account of fixed assets), in subsection (2A), in paragraphs (e) and (f) for "2012, 2013 or 2014" substitute "from 2012 up to and including 2016".

Amendment of section 27

9. In section 27 (transactions between associated parties), at the end of subsection (1) insert—

"Provided that, the other business or person is granted a tax relief in the sum equal to the increase of profits or benefits arising under this subsection."

Amendment of Schedule 1

10.—(1) Schedule 1 (meaning of Company) is amended as follows.

(2) In paragraph 22 for "and" substitute ",".

(3) In paragraph 22 after "'spólka z ograniczoną odpowiedzialnością'" insert "and 'spólka komandytowo-akcyjna'."

(4) After paragraph 25 insert—

"**26**. Companies under Croatian law known as 'dioničko društvo', 'društvo s organičenom odgovornošću', and other companies incorporated under Croatian law subject to Croatian corporate tax.

27. Companies under Bulgarian law known as 'събирателното дружество', 'командитното дружество', 'дружество с ограничена отговорност', 'акционерното дружество', 'командитното дружество с акции', 'неперсонифицирано дружество', 'кооперации', 'кооперативни съюзи', 'държавни предприятия'.

28. Companies under Romanian law known as 'societăţi pe acţiuni', 'societăţi în comandită pe acţiuni', 'societăţi cu răspundere limitată', 'societate in nume colectiv', 'societate in comandita simpla'."

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Income Tax (Amendment) Ordinance 2018 ("the Ordinance"). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance amends the Income Tax Ordinance 2003 ("the principal Ordinance"). The effect of the main changes is as follows.

3. In section 2 (interpretation) the definition of "permanent establishment" is amended and a new definition of "innovative business" is inserted.

4. The definition of "permanent establishment" is extended to include places of extraction and exploitation of continental shelf, subsoil or natural resources, and places of installation and exploitation of pipes or other equipment in the sea bed.

5. "Innovative business" is defined as any business which either: i) satisfies the Commissioner by way of an expert report that it may in the near future develop new or substantially improved products, services or processes; or ii) no less than 10% of its total operational costs in any year in the preceding three years' period has been dedicated to research and development.

6. Section 8 (exemptions) is amended. The following two new exemptions from income tax are added: i) profit arising from fluctuation of currency exchange rates (but not where such profit arises from exchange trading); and ii) profit accrued by an individual between 31 December 2015 and 31 December 2017 as a result of direct or indirect disposal or transfer of immovable property or rights derived from a contract of sale with the aim of reducing or paying off debts or other credit facilities.

7. Section 8 is further amended. New provisions are inserted in respect of income tax of certain employed persons. Currently, section 8 provides an income tax exemption for persons who have not been resident in the Areas prior to the commencement of their employment in the Areas. The exemption applies to either 20% or €8,550 of a person's salary (whichever is lesser). Previously, this exemption applied for a period of three years starting on 1 January of the year following the year in which the employment in the Areas commenced. The effect of the amendment is to extend the three years' period to five years or until the year 2020 (whichever is sooner). The new provisions apply retrospectively from the tax year 2012.

8. Section 8 is further amended by qualifying the current exemption in section 8, paragraph (n) in respect of companies. Previously, paragraph (n) allowed a general exemption from tax on the income received from dividends. This is now qualified in respect of income from dividends received by companies to the effect that this income is exempt from tax only where the company paying the dividends is subject to foreign tax on the same dividends. This ensures a company pays income tax in the Areas where no tax was paid on the dividends overseas.

9. Section 9 (deductions allowed) is amended by making further provisions for calculating taxable income. The effect of the amendment is that 80% of the selectable profit produced by a selectable intangible asset may be deducted in order to determine taxable income, unless deductions have been made in respect of that profit under other provisions of section 9. Where loss instead of profit incurs, loss may be set off by up to 20% in accordance with section 13 (allowance of trade losses).

10. A new section 9A (deducted costs for investment in small or medium-sized innovative business) is inserted to allow costs incurred by an individual as a result of investment in a small or medium-sized innovative business to be deducted when calculating that person's taxable income for the tax years 2017, 2018 and 2019.

11. Section 10 (reductions and additions on account of fixed assets) is amended to the effect that annual deductions of 20% are now allowed in respect of depreciation in the value of plant and machinery, and of 7% in respect of depreciation in the value of industrial and hotel buildings, acquired in the tax years between 2012 and 2016 (inclusive).

12. Schedule 1 (meaning of Company) to the principal Ordinance is amended to include in the definition of “company” companies incorporated under Croatian, Bulgarian and Romanian law.

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