EU Direct Tax Newsalert

Gibraltar implements ATAD Article 5 – Exit Taxation

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On 30 January 2020 the Gibraltar Government published the Income Tax (Amendment No.3) Regulations 2020 ("the Regulations") transposing the provisions of Article 5 of the Council Directive (EU) 2016/1164 of 12 July 2016 into Gibraltar law.

Scope

The Regulations which closely follow the Article 5 provisions come into operation on 1 January 2020 and impose an exit tax in any of the following circumstances where a taxpayer transfers:

- assets from its Gibraltar Head Office to its Permanent Establishment ("PE") outside Gibraltar and Gibraltar no longer has the right to tax the transferred assets;

- assets from its Gibraltar PE to its Head Office or PE outside of Gibraltar and Gibraltar no longer has the right to tax the transferred assets;

- its tax residence outside of Gibraltar and acquires tax residence in another jurisdiction (excluding assets which remain effectively connected to the Gibraltar PE); and

- the business carried on by its Gibraltar PE to another jurisdiction and in doing so the taxpayer:

- (i) ceases to have a taxable presence in Gibraltar;
- (ii) acquires a presence elsewhere without becoming tax resident; and
- (iii) Gibraltar loses the right to tax the transferred assets due to the transfer.

The tax

The taxpayer shall be chargeable to tax at the rate of 10% on the difference between the market value of the transferred assets which would otherwise produce assessable income under the provisions of the Gibraltar Income Tax Act 2010 at the time of exit of the assets less their value for tax purposes.

"market value" is defined in the Regulations as the amount for which an asset can be exchanged, or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

Deferral of payment

The taxpayer has the choice of making an immediate payment of the exit tax charge or a spreading the payment of a 5-year period.

To qualify for the deferral, the transferee of the Gibraltar assets must be established in an EU Member State or an EEA Member State with which Gibraltar concluded an agreement on mutual assistance in the recovery of taxes.

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