

Ministerial Statement to Parliament

**The Hon. Nigel Feetham KC MP, Minister for Justice,
Trade and Industry**

24 January 2024

Madam Speaker, I rise to make this Ministerial Statement to update our Parliament and our country on a corporate tax reform and on progress on an important aspect of Government tax policy. I remind our Parliament that we, as a government, aim to foster both fiscal responsibility and fairness in our pursuit of a sustainable tax system; one that positions and strengthens our economy against future challenges.

This reform focuses on expanding the application of paragraph 15 of Schedule 3 of the Income Tax Act 2010, under which money lenders and deposit taking institutions are charged to tax on their interest income on the basis that the purchase of debt instruments or the making of loans is a principal part of their business model and trade.

In the intervening years since the Income Tax Act was first introduced in 2010, the landscape of financial services and related businesses has changed radically. The invention and wide-adoption of crypto has revolutionised the industry and a number of crypto-based financial businesses have evolved globally.

In addition, insurance companies now more frequently utilise and rely on debt instruments to fund their operations and also invest to ensure that claims may be paid from adequate resources and sustainable returns; it is a significant and fundamentally integral part of their trade.

This reform therefore considers the changes necessary to modernise our tax legislation providing certainty and clarity whilst balancing the need to maintain minimal administrative burden or unfair additional tax on the general body of taxpayers.

This measure is rooted in the principles of ensuring fairness in taxation; one that ensures that financial services entities contribute to the nation's economic well-being.

We are therefore extending paragraph 15, Schedule 3 to insurers and Distributed Ledger Technology (DLT) firms. Leaving the uncertainty which is currently inherent in the Act creates an inequitable situation and can no longer be justified.

Most importantly, insurance companies, are now enjoying financial profits from record-high interest rates; the taxation of these interest and interest like gains ensures that this success is shared with the broader community through tax revenue. The privileged market access that insurers enjoy to the UK market is a unique benefit for Gibraltar-based insurers. The proposed amendment reinforces the shared responsibility of contributing to the community for this privilege.

Responsible corporate citizenship is very important to our Government. I do not believe that asking these firms to contribute a modest, but fair share of these increased profits, is unreasonable. We are doing so without increasing the corporate tax rate which remains low at 12.5% compared to other jurisdictions; in fact the average European OECD corporate tax rate is 21.5%.

In any modern and progressive jurisdiction, tax rules must remain dynamic and evolve to cater for advancements in technology and the ever-evolving landscape. Extending this

provision to DLT firms is a prime example of this. Despite the innovative and distinct asset class, this sector, in substance, exhibits characteristics of traditional banks and money lenders; generating income from interest equivalent activities. Applying taxation ensures there is no disparate tax treatment based on distinct regulatory treatment. Without this, we may unintentionally create a lacuna because these entities did not exist when Gibraltar introduced the Income Tax Act 2010! As the financial landscape evolves, it is crucial for tax policies to adapt to these changes and ensure a level playing field for financial entities.

Implementing a responsible fiscal policy for our community is our Government's priority; one where the burden falls on those able to pay, including from increased profits. It emphasises the importance of sharing this responsibility and the continued contribution to the economic well-being of Gibraltar under which the revenue from taxation can fund important areas such as public services and education.

What we are seeking to achieve is not unique. Other European countries, including the UK, tax the income of such businesses.

There will be no other change to the existing legislative provision on interest income; it will continue to tax interest earned by banks and money lenders but also now identifies other industries and classes of income which are similar or equivalent, extending the charge to cover these. Reinforcing the underlying principle of Gibraltar taxation that legal form gives no benefit, and that taxpayers in similar circumstances pay similar taxes.

As with any tax reform, we have sought to mitigate against abuse and exploitation and have designed relevant anti-avoidance measures against this. These rules, include both a

general and specific provision ensuring that arrangements and transactions entered into by in-scope taxpayers are not constituted in a manner that seek to circumvent tax on the resulting interest by reference to both the main purpose of the arrangement or transaction or the disposal of any interest-bearing asset to connected persons.

We are confident that the reform is compatible with our Government's principles of equity and fairness. It eliminates the unfair distinction which presently exists between banks and moneylenders on the one hand and those that exhibit similar characteristics but are outside scope either due to a difference in the category of financial asset used or because they are regulated under different legislation. It demonstrates our continued move towards a modern and consistent tax system and one which merely extends a pre-existing charge to a new class of entities and businesses.

Our proposed amendment extends the tax net to more regulated and registered entities, thereby ensuring that those caught by this provision accrue interest as an integral part of their trade.

Finally, it eliminates any residual doubt over the taxation of this income and gives clarity to such new businesses (insurers and DLT firms), similarly to how the original provision did so for banks and money lenders.

Honourable Members opposite may question the timing of this announcement and in particular why it has not been made later in the year during the Budget session. The answer is simple. It is necessary to fine-tune tax law and ensure this constantly evolves in order to ensure it is correct and maintains the intended application and objective. We must ensure that tax vigilance is a regular and necessary function of our tax system; not one to be completed only once a year!

As the Parliamentary workload increases, I believe it is beneficial to introduce minor reforms periodically as these are identified; small steps throughout the entire year rather than all in one go.

In doing so, we will stay true to the important principle of fairly sharing the responsibility of contributing to the economic well-being of our community and this must include corporate citizens. We must tax entities in similar circumstances in the same way where possible, we must ensure form cannot be used to undermine tax legislation, we must do all of this in the least disruptive manner and only go as far as is needed and we should include real, effective and powerful anti-avoidance measures.

Madam Speaker, this reform will not weaken us against our competitor jurisdictions; our low tax rate at 12.5% still compares well to those of developed economies of Europe. It is important to note that Gibraltar's attraction is measured across many benefits, not just tax. Gibraltar has very-highly regarded regulatory regimes (including in insurance and DLT) and high levels of workforce expertise in these industry sectors. We are well placed to continue to cement our attractiveness as a jurisdiction. In addition, my Ministry is continuing to implement policy commitments to increase our competitiveness, including working with the financial sectors to increase our product offering. I hope to be in a position to make concrete announcements relevant to both insurance and DLT sectors soon.

The reform I am announcing will come into effect as of 1 February once the legislation is brought to and passed by Parliament. In this regard, we are finalising this Bill and I expect to be in a position to move ahead on this imminently.

As is now customary, we will be releasing a press release on this reform. This is aimed at providing guidance and clear channels of communication to everyone. This is a team effort and I would like to publicly express my gratitude to not only those hard working colleagues from within both my Ministerial Office (including Julian Baldachino) and the Income Tax Office (including Commissioner of Income Tax), but also the FSC, advisers we have consulted and stakeholders we have spoken to.

Madam Speaker, I would also like to take this opportunity to update this Parliament on the initiative I recently announced regarding the recruitment of two tax specialists to the Income Tax Office.

I am glad to announce that the selection process has now been completed and that two individuals have been selected for these roles. We are finalising the necessary paperwork and expect to on-board these individuals shortly after the start of the new financial year. This timing is entirely due to the notice period required in their current roles, which in itself is indicative of the high calibre and seniority we are expecting to recruit.

These are important times for taxation in Gibraltar, and as Minister, I am proud and privileged to be tasked with this responsibility. In conjunction with our already excellent team, the recruitment of these two professionals will allow us to modernise further the Income Tax Office and deliver positively on all planned outcomes for the benefit of our community.

I am obliged Madam Speaker.

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